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Presidential Documents

Title 3—

The President

Proclamation 7295 of April 15, 2000

Establishment of the Giant Sequoia National Monument

By the President of the United States of America

A Proclamation

The rich and varied landscape of the Giant Sequoia National Monument holds a diverse array of scientific and historic resources. Magnificent groves of towering giant sequoias, the world's largest trees, are interspersed within a great belt of coniferous forest, jeweled with mountain meadows. Bold granitic domes, spires, and plunging gorges texture the landscape. The area's elevation climbs from about 2,500 to 9,700 feet over a distance of only a few miles, capturing an extraordinary number of habitats within a relatively small area. This spectrum of ecosystems is home to a diverse array of plants and animals, many of which are rare or endemic to the southern Sierra Nevada. The monument embraces limestone caverns and holds unique paleontological resources documenting tens of thousands of years of ecosystem change. The monument also has many archaeological sites recording Native American occupation and adaptations to this complex landscape, and historic remnants of early Euroamerican settlement as well as the commercial exploitation of the giant sequoias. The monument provides exemplary opportunities for biologists, geologists, paleontologists, archaeologists, and historians to study these objects.

Ancestral forms of giant sequoia were a part of the western North American landscape for millions of years. Giant sequoias are the largest trees ever to have lived, and are among the world's longest-lived trees, reaching ages of more than 3,200 years or more. Because of this great longevity, giant sequoias hold within their tree rings multi-millennial records of past environmental changes such as climate, fire regimes, and consequent forest response. Only one other North American tree species, the high-elevation bristlecone pine of the desert mountain ranges east of the Sierra Nevada, holds such lengthy and detailed chronologies of past changes and events.

Sequoias and their surrounding ecosystems provide a context for understanding ongoing environmental changes. For example, a century of fire suppression has led to an unprecedented failure in sequoia reproduction in otherwise undisturbed groves. Climatic change also has influenced the sequoia groves; their present highly disjunct distribution is at least partly due to generally higher summertime temperatures and prolonged summer droughts in California from about 10,000 to 4,500 years ago. During that period, sequoias were rarer than today. Only following a slight cooling and shortening of summer droughts, about 4,500 years ago, has the sequoia been able to spread and create today's groves.

These giant sequoia groves and the surrounding forest provide an excellent opportunity to understand the consequences of different approaches to forest restoration. These forests need restoration to counteract the effects of a century of fire suppression and logging. Fire suppression has caused forests to become denser in many areas, with increased dominance of shade-tolerant species. Woody debris has accumulated, causing an unprecedented buildup of surface fuels. One of the most immediate consequences of these changes is an increased hazard of wildfires of a severity that was rarely encountered in pre-Euroamerican times. Outstanding opportunities exist for studying the

consequences of different approaches to mitigating these conditions and restoring natural forest resilience.

The great elevational range of the monument embraces a number of climatic zones, providing habitats for an extraordinary diversity of plant species and communities. The monument is rich in rare plants and is home to more than 200 plant species endemic to the southern Sierra Nevada mountain range, arrayed in plant communities ranging from low-elevation oak woodlands and chaparral to high-elevation subalpine forest. Numerous meadows and streams provide an interconnected web of habitats for moisture-loving species.

This spectrum of interconnected vegetation types provides essential habitat for wildlife, ranging from large, charismatic animals to less visible and less familiar forms of life, such as fungi and insects. The mid-elevation forests are dominated by massive conifers arrayed in a complex landscape mosaic, providing one of the last refugia for the Pacific fisher in California. The fisher appears to have been extirpated from the northern Sierra Nevada mountain range. The forests of the monument are also home to great gray owl, American marten, northern goshawk, peregrine falcon, spotted owl, and a number of rare amphibians. The giant sequoias themselves are the only known trees large enough to provide nesting cavities for the California condor, which otherwise must nest on cliff faces. In fact, the last pair of condors breeding in the wild was discovered in a giant sequoia that is part of the new monument. The monument's giant sequoia ecosystem remains available for the return and study of condors.

The physiography and geology of the monument have been shaped by millions of years of intensive uplift, erosion, volcanism, and glaciation. The monument is dominated by granitic rocks, most noticeable as domes and spires in areas such as the Needles. The magnificent Kern Canyon forms the eastern boundary of the monument's southern unit. The canyon follows an ancient fault, forming the only major north-south river drainage in the Sierra Nevada. Remnants of volcanism are expressed as hot springs and soda springs in some drainages.

Particularly in the northern unit of the monument, limestone outcrops, remnants of an ancient seabed, are noted for their caves. Subfossil vegetation entombed within ancient woodrat middens in these caves has provided the only direct evidence of where giant sequoias grew during the Pleistocene Era, and documents substantial vegetation changes over the last 50,000 or more years. Vertebrate fossils also have been found within the middens. Other paleontological resources are found in meadow sediments, which hold detailed records of the last 10 millennia of changing vegetation, fire regimes, and volcanism in the Sierra Nevada. The multi-millennial, annual- and seasonal-resolution records of past fire regimes held in giant sequoia tree-rings are unique worldwide.

During the past 8,000 years, Native American peoples of the Sierra Nevada have lived by hunting and fishing, gathering, and trading with other people throughout the region. Archaeological sites such as lithic scatters, food-processing sites, rock shelters, village sites, petroglyphs, and pictographs are found in the monument. These sites have the potential to shed light on the roles of prehistoric peoples, including the role they played in shaping the ecosystems on which they depended.

One of the earliest recorded references to giant sequoias is found in the notes of the Walker Expedition of 1833, which described ''trees of the redwood species, incredibly large . . . .'' The world became aware of giant sequoias when sections of the massive trees were transported east and displayed as curiosities for eastern audiences. Logging of giant sequoias throughout the Sierra Nevada mountain range began in 1856. Logging has continued intermittently to this day on nonfederal lands within the area of the monument. Early entrepreneurs, seeing profit in the gigantic trees, began acquiring lands within the present monument under the Timber and Stone Act in the 1880s. Today our understanding of the history of the Hume Lake and

Converse Basin areas of the monument is supported by a treasure trove of historical photographs and other documentation. These records provide a unique and unusually clear picture of more than half a century of logging that resulted in the virtual removal of most forest in some areas of the monument. Outstanding opportunities exist for studying forest resilience to large-scale logging and the consequences of different approaches to forest restoration.

Section 2 of the Act of June 8, 1906 (34 Stat. 225, 16 U.S.C. 431) authorizes the President, in his discretion, to declare by public proclamation historic landmarks, historic and prehistoric structures, and other objects of historic or scientific interest that are situated upon lands owned or controlled by the Government of the United States to be national monuments, and to reserve as a part thereof parcels of land, the limits of which in all cases, shall be confined to the smallest area compatible with the proper care and management of the objects to be protected.

WHEREAS it appears that it would be in the public interest to reserve such lands as a national monument to be known as the Giant Sequoia National Monument:

NOW, THEREFORE, I, WILLIAM J. CLINTON, President of the United States of America, by the authority vested in me by section 2 of the Act of June 8, 1906 (34 Stat. 225, 16 U.S.C. 431), do proclaim that there are hereby set apart and reserved as the Giant Sequoia National Monument, for the purpose of protecting the objects identified in the above preceding paragraphs, all lands and interests in lands owned or controlled by the United States within the boundaries of the area described on the map entitled ''Proposed Giant Sequoia National Monument'' attached to and forming a part of this proclamation. The Federal land and interests in land reserved consist of approximately 327,769 acres, which is the smallest area compatible with the proper care and management of the objects to be protected as identified in the above preceding paragraphs.

All Federal lands and interests in lands within the boundaries of this monument are hereby appropriated and withdrawn from entry, location, selection, sale, leasing, or other disposition under the public land laws including, but not limited to, withdrawal from locating, entry, and patent under the mining laws and from disposition under all laws relating to mineral and geothermal leasing, other than by exchange that furthers the protective purposes of the monument. Lands and interests in lands within the boundaries of the monument not owned by the United States shall be reserved as a part of the monument upon acquisition of title thereto by the United States.

The establishment of this monument is subject to valid existing rights.

Timber sales under contract as of the date of the proclamation and timber sales with a decision notice signed after January 1, 1999, but prior to December 31, 1999, may be completed consistent with the terms of the decision notice and contract. No portion of the monument shall be considered to be suited for timber production, and no part of the monument shall be used in a calculation or provision of a sustained yield of timber from the Sequoia National Forest. Removal of trees, except for personal use fuel wood, from within the monument area may take place only if clearly needed for ecological restoration and maintenance or public safety.

The Secretary of Agriculture shall manage the monument, along with the underlying Forest, through the Forest Service, pursuant to applicable legal authorities, to implement the purposes and provisions of this proclamation. The Secretary of Agriculture shall prepare, within 3 years of this date, a management plan for this monument, and shall promulgate such regulations for its management as deemed appropriate. The plan will provide for and encourage continued public and recreational access and use consistent with the purposes of the monument.

Unique scientific and ecological issues are involved in management of giant sequoia groves, including groves located in nearby and adjacent lands managed by the Bureau of Land Management and the National Park Service. The Secretary, in consultation with the National Academy of Sciences, shall appoint a Scientific Advisory Board to provide scientific guidance during the development of the initial management plan. Board membership shall represent a range of scientific disciplines pertaining to the objects to be protected, including, but not necessarily limited to, the physical, biological, and social sciences.

The Secretary, through the Forest Service, shall, in developing any management plans and any management rules and regulations governing the monument, consult with the Secretary of the Interior, through the Bureau of Land Management and the National Park Service. The final decision to issue any management plans and any management rules and regulations rests with the Secretary of Agriculture. Management plans or rules and regulations developed by the Secretary of the Interior governing uses within national parks or other national monuments administered by the Secretary of the Interior shall not apply within the Giant Sequoia National Monument.

The management plan shall contain a transportation plan for the monument that provides for visitor enjoyment and understanding about the scientific and historic objects in the monument, consistent with their protection. For the purposes of protecting the objects included in the monument, motorized vehicle use will be permitted only on designated roads, and non-motorized mechanized vehicle use will be permitted only on designated roads and trails, except for emergency or authorized administrative purposes or to provide access for persons with disabilities. No new roads or trails will be authorized within the monument except to further the purposes of the monument. Prior to the issuance of the management plan, existing roads and trails may be closed or altered to protect the objects of interest in the monument, and motorized vehicle use will be permitted on trails until but not after December 31, 2000.

Nothing in this proclamation shall be deemed to diminish or enlarge the jurisdiction of the State of California with respect to fish and wildlife management.

There is hereby reserved, as of the date of this proclamation and subject to valid existing rights, a quantity of water sufficient to fulfill the purposes for which this monument is established. Nothing in this reservation shall be construed as a relinquishment or reduction of any water use or rights reserved or appropriated by the United States on or before the date of this proclamation.

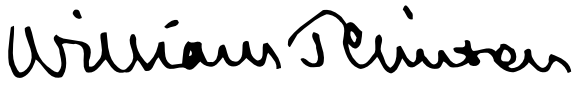
Laws, regulations, and policies pertaining to administration by the Department of Agriculture of grazing permits and timber sales under contract as of the date of this proclamation on National Forest System lands within the boundaries of the monument shall continue to apply to lands within the monument.

Nothing in this proclamation shall be deemed to affect existing special use authorizations; existing uses shall be governed by applicable laws, regulations, and management plans.

Nothing in this proclamation shall be deemed to revoke any existing withdrawal, reservation, or appropriation; however, the national monument shall be the dominant reservation.

Warning is hereby given to all unauthorized persons not to appropriate, injure, destroy, or remove any feature of this monument and not to locate or settle upon any of the lands thereof.

IN WITNESS WHEREOF, I have hereunto set my hand this fifteenth day of April, in the year of our Lord two thousand, and of the Independence of the United States of America the two hundred and twenty fourth.



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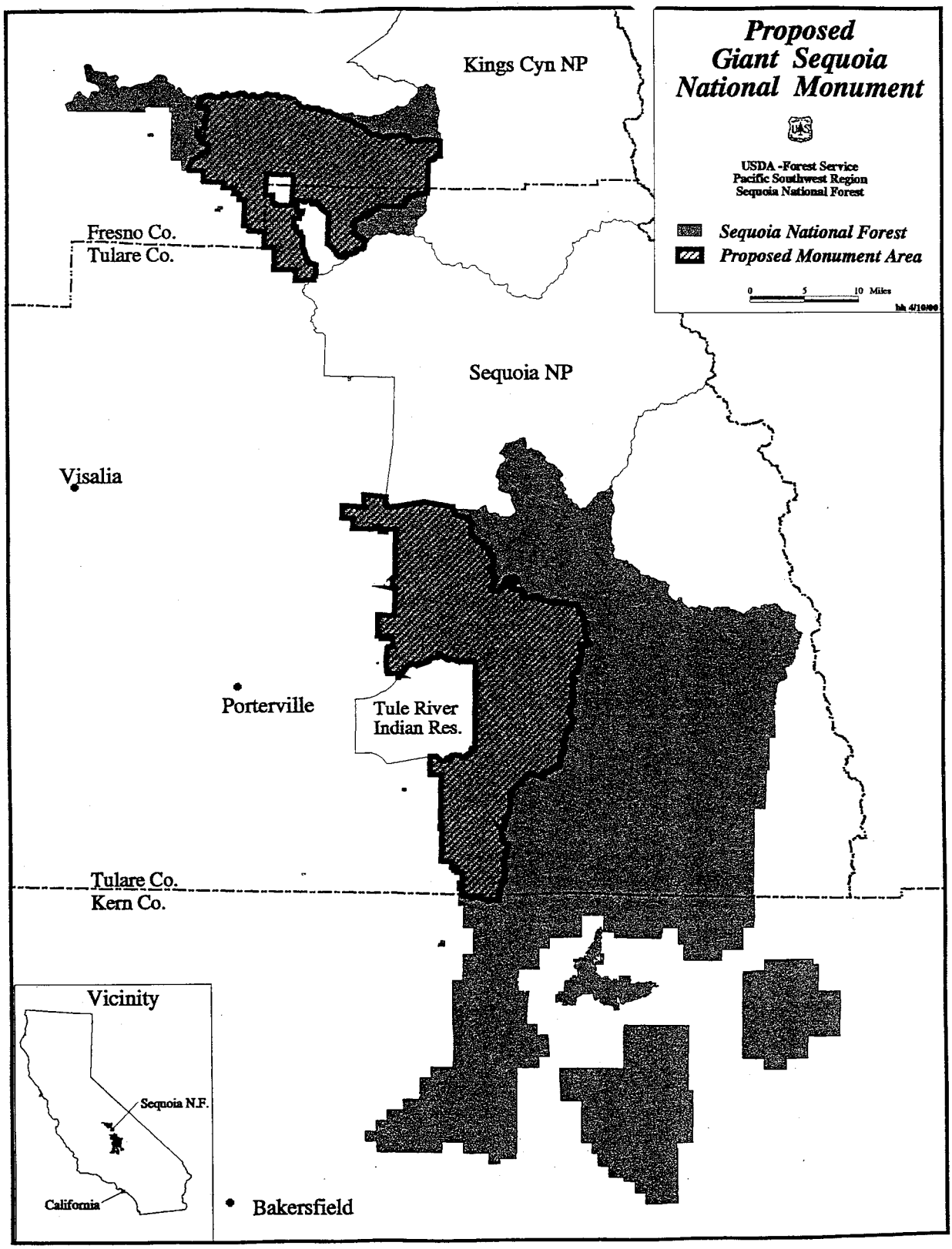

[FR Doc. 00–10312

Filed 4–24–00; 8:45 am]

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Rules and Regulations

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Tuesday, April 25, 2000

FARM CREDIT ADMINISTRATION

12 CFR Part 614

RIN 3052–AB87

Loan Policies and Operations; Participations

AGENCY: Farm Credit Administration (FCA).

ACTION: Final rule.

SUMMARY: This final rule deletes requirements for a Farm Credit System (Farm Credit or System) institution to provide notice to or seek consent from other System institutions when it buys participation interests in loans originated outside its chartered territory. Repealing these notice and consent requirements can help increase the flow and availability of agricultural credit and help diversify geographic and industry concentrations in the loan portfolios of Farm Credit banks and associations. As a result of this rule, a Farm Credit bank or association will no longer need approval from other System institutions when it buys participations in loans from non-System lenders.

EFFECTIVE DATE: These regulations will become effective 30 days after publication in the **Federal Register** during which either one or both houses of Congress are in session. We will publish a notice of the effective date in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT:

S. Robert Coleman, Senior Policy Analyst, Office of Policy and Analysis, Farm Credit Administration, McLean, VA 22102–5090, (703) 883–4498, TDD (703) 883–4444; or

Richard A. Katz, Senior Attorney, Office of General Counsel, Farm Credit Administration, McLean, VA 22102–5090. (703) 883–4020, TDD (703) 883–4444.

SUPPLEMENTARY INFORMATION:

I. Objective

Our objectives are to:

- Increase the flow and availability of agricultural credit to farmers, ranchers, and aquatic producers;
- Diversify geographic and industry concentrations in the loan portfolios of Farm Credit banks and associations; and
- Remove notice and consent requirements for loan participations purchased from non-System lenders.

II. Background

We repeal the notice and consent requirements that apply to loan participations between Farm Credit and non-System lenders. As a result, a System bank or association will no longer need approval from other Farm Credit institutions when it buys participations in loans that non-System lenders make outside of the purchaser's chartered territory.

This final rule does not affect loan participations between System institutions. We have never required consent for intra-System participations because the originating lender's consent is implicit when it offers the participation.

On November 9, 1998, we published a proposal to repeal several regulations that restrict your institution's authority to make loans, buy loan participations, and offer related services outside your chartered territory. *See* 63 FR 60219. On December 16, 1998, we extended the comment period until May 10, 1999. *See* 63 FR 69229.

We received over 270 comment letters on the proposed rule. No commenter cited any statutory provision that restricts the authority of System banks and associations to participate in loans outside of their chartered territory. Only one comment letter mentioned the statutory authorities of System institutions to participate in loans.

Separately, three System associations asked us for permission to participate in loans in the territory of other System institutions without consent. These institutions wanted to diversify credit and concentration risks in their loan portfolios and help farmers and ranchers by increasing the liquidity of non-System lenders.

III. Removing Notice and Consent Requirements for Loan Participations

Removing the geographic restrictions on loan participation authorities will allow System lenders and non-System lenders to work together at a time when the agricultural economy is experiencing significant stress. Currently, farmers and ranchers are suffering from weak commodity prices, depressed export markets, drought, and reduced production.

Our final rule will benefit farmers, System institutions, and non-System lenders such as commercial banks and the finance arms of farm supply businesses and equipment dealers. Sound loan participation programs can increase the availability of agricultural credit to farmers and ranchers. System banks and associations can increase the liquidity of community banks and independent finance companies by purchasing participation interests in loans that these lenders make to farmers and ranchers. System institutions can also diversify geographic and industry concentrations in their loan portfolios by buying participation interests in sound credits made in a larger geographic territory. Cooperation among System and non-System lenders can increase agricultural credit availability, particularly during downturns in the economic cycle, such as the one that agriculture is currently experiencing.

Our former regulations restricted out-of-territory loan participations for policy reasons. Agriculture and financial markets have changed dramatically over the past 20 years. Commercial lenders have consolidated and are subject to few restrictions on their authority to lend to farmers throughout the United States. As a result, our former regulations are outdated because the System cannot effectively work with non-System lenders to most efficiently deliver credit to agriculture and rural America.

In recent years, we have eliminated non-statutory restrictions that prevent System institutions from leasing and participating in similar entity [1] loans outside of their territories. This rule extends our policy to loan participations purchased from non-System lenders. This final rule creates a consistent policy that allows System banks and associations to participate in loans that

[1] Similar entity means a party that is ineligible for a loan from a Farm Credit bank or association, but has operations that are functionally similar to the activities of eligible borrowers in that a majority of its income is derived from, or a majority of its assets are invested in, the conduct of activities that are performed by eligible borrowers. *See* sections 3.1(11)(B)(ii) and 4.18A(a)(2) of the Act.

non-System institutions make to both eligible borrowers and similar entities that operate in the chartered territory of other System institutions.

The final rule does not authorize direct lender associations to exercise lending authority outside their chartered territory without consent. Furthermore, buying out-of-territory loan participation does not change the chartered territory of any System institution. In buying participations in loans that non-System lenders originate, a System institution is not lending outside its chartered territory.

We believe buying out-of-territory loan participations helps the System to fulfill its mission to finance agriculture. Our rule enables the System under section 1.1(a) of the Farm Credit Act of 1971, as amended (Act) to improve ''the income and well-being of American farmers and ranchers by furnishing sound, adequate, and constructive credit * * * to them * * *.'' By eliminating artificial territorial restrictions for loan participations, we promote cooperation among creditors, which will in turn benefit farmers, ranchers, and rural America.

We achieve these objectives by exercising our statutory power to repeal regulations that restrict the free flow of credit to farmers and ranchers. The Act specifically allows System banks and associations to participate with commercial lenders in the types of loans that they can make. In granting this broad authority, the Act places no geographic restrictions on where System banks and associations may buy participations in loans.

List of Subjects in 12 CFR Part 614

Agriculture, Banks, banking, Flood insurance, Foreign trade, Reporting and recordkeeping requirements, Rural areas.

For the reasons stated in the preamble, part 614 of chapter VI, title 12 of the Code of Federal Regulations is amended to read as follows:

PART 614—LOAN POLICIES AND OPERATIONS

1. The authority citation for part 614 continues to read as follows:

Authority: 42 U.S.C. 4012a, 4104a, 4104b, 4106, and 4128; secs. 1.3, 1.5, 1.6, 1.7, 1.9, 1.10, 1.11, 2.0, 2.2, 2.3, 2.4, 2.10, 2.12, 2.13, 2.15, 3.0, 3.1, 3.3, 3.7, 3.8, 3.10, 3.20, 3.28, 4.12, 4.12A, 4.13, 4.13B, 4.14, 4.14A, 4.14C, 4.14D, 4.14E, 4.18, 4.18A, 4.19, 4.25, 4.26, 4.27, 4.28, 4.36, 4.37, 5.9, 5.10, 5.17, 7.0, 7.2, 7.6, 7.8, 7.12, 7.13, 8.0, 8.5, of the Farm Credit Act (12 U.S.C. 2011, 2013, 2014, 2015, 2017, 2018, 2019, 2071, 2073, 2074, 2075, 2091, 2093, 2094, 2097, 2121, 2122, 2124, 2128, 2129, 2131, 2141, 2149, 2183, 2184, 2199, 2201, 2202, 2202a, 2202c, 2202d, 2202e, 2206, 2206a, 2207, 2211, 2212, 2213, 2214, 2219a, 2219b, 2243, 2244, 2252, 2279a, 2279a–2, 2279b, 2279c–1, 2279f, 2279f–1, 2279aa, 2279aa–5); sec. 413 of Pub. L. 100–233, 101 Stat. 1568, 1639.

Subpart A—Lending Authorities

§ 614.4000 [Amended]

2. Amend § 614.000 as follows:

a. Remove paragraph (d)(2);

b. Remove the words ''and paragraph (d)(2) of this section'' from paragraph (d)(1);

c. Redesignate paragraphs (d)(1), (d)(1)(i), and (d)(1)(ii) as paragraphs (d) introductory text, (d)(1) and (d)(2), respectively;

d. Remove the '':'' at the end of newly designated paragraph (d)(1) and add ''; and''; and

e. Remove ''; and'' at the end of newly designated paragraph (d)(2) and add ''.''.

§ 614.4010 [Amended]

3. Amend § 614.4010 as follows:

a. Remove paragraph (e)(2);

b. Remove the words ''and paragraph (d)(2) of this section'' from paragraph (e)(1);

c. Redesignate paragraphs (e)(1), (e)(1)(i), and (e)(1)(ii) as paragraphs (e) introductory text, (e)(1) and (e)(2), respectively; and

d. Remove ''; and'' at the end of newly designated paragraph (e)(2) and add ''.''.

§ 614.4030 [Amended]

4. Amend § 614.4030 as follows:

a. Remove paragraph (b)(2);

b. Remove the words ''and paragraph (b)(2) of this section'' from paragraph (b)(1); and

c. Redesignate paragraphs (b)(1), (b)(1)(i), and (b)(1)(ii) as paragraphs (b) introductory text, (b)(1) and (b)(2), respectively; and

d. Remove the '':'' at the end of newly designated paragraph (b)(1) and add ''; and''; and

e. Remove ''; and'' at the end of newly designated paragraph (b)(2) and add ''.''.

§ 614.4040 [Amended]

5. Amend § 614.4040 as follows:

a. Remove paragraph (b)(2);

b. Remove the words ''and paragraph (b)(2) of this section'' from paragraph (b)(1); and

c. Redesignate paragraphs (b)(1), (b)(1)(i), and (b)(1)(ii) as paragraphs (b) introductory text, (b)(1) and (b)(2), respectively.

§ 614.4050 [Amended]

6. Amend § 614.4050 as follows:

a. Remove paragraph (c)(2);

b. Remove the words ''and paragraph (c)(2) of this section'' from paragraph (c)(1); and

c. Redesignate paragraphs (c)(1), (c)(1)(i), and (c)(1)(ii) as paragraphs (c) introductory text, (c)(1) and (c)(2), respectively.

Dated: April 14, 2000.

Vivian L. Portis,

Secretary, Farm Credit Administration Board.

[FR Doc. 00–9955 Filed 4–24–00; 8:45 am]

BILLING CODE 6705–01–M

EMERGENCY STEEL GUARANTEE LOAN BOARD

13 CFR Part 400

RIN 3003–ZA00

Emergency Steel Guarantee Loan Program; Conforming Changes

AGENCY: Emergency Steel Guarantee Loan Board.

ACTION: Final rule.

SUMMARY: The Emergency Steel Guarantee Loan Board (Board) is amending the regulations governing the Emergency Steel Guarantee Loan Program (Program). These changes are meant to conform the regulations and the guarantee agreement that will be used for the program. The intent of these changes is to eliminate potential ambiguities or unintended conflicts between the language of the regulations and that of the Guarantee agreement. This rule also makes several technical changes to merely conform the regulations with the standard of care adopted by the Board, to conform the regulations to the form of the Guarantee and form of Application for Guarantee adopted by the Board, correct minor typographical errors and add a mail stop to the Board's mailing address, or to clarify the allocation of Lender responsibilities, liabilities and restrictions in circumstances where more than one lender are parties to the Guarantee.

DATES: This rule is effective April 25, 2000.

FOR FURTHER INFORMATION CONTACT: Jay E. Dittus, Executive Director, Emergency Steel Guarantee Loan Board, U.S. Department of Commerce, Room H2500, Washington, DC 20230, (202) 219–0584.

SUPPLEMENTARY INFORMATION: On October 27, 1999, the Board published a final rule codifying at chapter 4, title 13, Code of Federal Regulations (CFR), regulations implementing the Program, as established in chapter 1 of Public Law 106–51, the Emergency Steel Loan Guarantee Act of 1999 (64 FR 57932).

Section 400.2 sets forth certain definitions applicable to the Program. This rule adds a definition of ''Agent'', a term used in the Guarantee to refer to the applicant lender that is designated to perform certain duties on behalf of all lenders where more than one lender are parties to a Guarantee.

This rule also modifies the definition of ''Guarantee'' in § 400.2 to make clear that more than one lender may be parties to a Guarantee. The definition of ''Lender'' in § 400.2 is also modified to specify that in a multi-lender Guarantee, the term ''Lender'' means ''Agent''.

Section 400.201 of the Board's regulations sets forth the definition of an eligible lender for purposes of the Act and the factors that the Board will assess in determining whether the Board should issue a Guarantee to a particular applicant lender. The Board is amending this section of its regulations to correct a typographical error in paragraph (a)(2), to clarify that multiple lenders under one application for a guarantee must each meet the Eligible Lender requirements, to require that an application for guarantee from more than one lender identify the lender that will act as Agent, and to set forth the respective responsibilities and liabilities of individual lenders, where more than one lender are parties to a Guarantee.

Section 400.205 of the Board's regulations specifies the information and documentation to be contained in an application for guarantee. The section is being modified to include a reference to documentation demonstrating that the lender is eligible under § 400.201(a) and to allow the Board to make a determination to issue the guarantee to such lender under § 400.201(c), as required by paragraph 36 of the Board's form of Application for Guarantee.

Section 400.210 of the Board's regulations sets forth restrictions and limitations on transfer of interests in a guaranteed loan. The section has been revised to reflect the fact that there may be multiple lenders that are parties to a Guarantee, and to allow transfer by a non-Agent lender of the non-guaranteed portion of a loan after payment under the Guarantee has been made.

Section 400.211 sets forth lender responsibilities under the Program. Paragraph (b) of this section sets forth a standard of care applicable to actions taken by a lender. Specifically, the regulations state:

> The Lender shall exercise due care and diligence in administering the loan as would be exercised by a *responsible* and prudent banking institution when administering a secured loan of such banking institution's own funds without a Federal guaranty. Such standard shall also apply to any and all approvals, determinations, permissions, acceptances, requirements, or opinion made, given, imposed or reached by Lender. (emphasis added).

Subsequent to publication of the final rule, the Board has been informed that the formulation of the standard of care commonly used among commercial lenders requires the exercise of due care and diligence in administering the loan as would be exercised by a *reasonable* and prudent banking institution. (emphasis added). As such, the Board is amending its regulations to include the word ''reasonable'' in lieu of ''responsible'' as that is the term accepted and understood by commercial lenders to express the standard of care.

Paragraph (c) of § 400.211 requires a representation and agreement by the lender that it is able to, and will, administer the loan in accordance with the applicable standard of care. The paragraph has been modified to limit the representation and agreement to the applicant lender where there are multiple lenders that are parties to a Guarantee.

Paragraph (e) of § 400.211 specifies lender obligations with respect to loan monitoring. The paragraph is being amended to eliminate a requirement for best efforts to cause Borrower correction of any noncompliance with loan documents, because it is inconsistent with the ''reasonable and prudent'' standard of care that has been adopted by the Board.

Paragraph (f) of § 400.211 sets forth reporting requirements concerning guaranteed loans. The paragraph has been modified to eliminate certain references to specific due dates for reporting and instead refer to the terms of the Guarantee for such dates.

Paragraph (g) of § 400.211 states, in relevant part, that the Lender must notify the Board in writing without delay of the deterioration in the internal risk rating of a loan guaranteed under the Program within 3 business days of such action by the Lender; and the occurrence of each event of default under the Loan Documents or Guarantee promptly, but not later than 3 business days, of the Lender's learning of such occurrence. This rule merely changes, from three days to five days, the time within which the lender must provide notification of these events to the Board. This change is being made to provide lenders additional time to both discover and report the listed events.

Section 400.213 of the Board's regulations specifies the circumstances under which the Board in its discretion shall be entitled to terminate a guarantee. The section has been modified to conform to the form of Guarantee adopted by the Board by eliminating a reference to the possibility that a Guarantee might be executed before loan closing, eliminating a requirement for written notice of termination, and providing for partial as well as entire termination of a guarantee where there are multiple lenders that are parties to a Guarantee.

This rule does not affect a substantive change to the existing regulations. The government will hold lenders to the same standard of care using the term ''reasonable'' as it would have using the term ''responsible.'' This change is meant to clarify the regulations by using a term familiar to the lending community to express that standard of care. With regard to the time by which a lender must notify the Board of certain events, this rule does not change the events requiring notification, it merely changes the maximum time, from three days to five days, by which such reports must be made. The other changes merely conform the regulations with the standard of care adopted by the Board, conform the regulations to the form of Guarantee and form of Application for Guarantee adopted by the Board, correct a typographical error, or clarify the allocation of Lender responsibilities, liabilities and restrictions in circumstances where more than one lender are parties to a Guarantee.

Administrative Law Requirements

Executive Order 12866

This final rule has been determined not to be significant for purposes of Executive Order 12866.

Administrative Procedure Act

This rule is exempt from the rulemaking requirements contained in 5 U.S.C. 553 pursuant to authority contained in 5 U.S.C. 553(a)(2) as it involves a matter relating to loans. As such, prior notice and an opportunity for public comment and a delay in effective date otherwise required under 5 U.S.C. 553 are inapplicable to this rule.

Regulatory Flexibility Act

Because this rule is not subject to a requirement to provide prior notice and an opportunity for public comment pursuant to 5 U.S.C. 553, or any other law, the analytical requirements of the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.*, are inapplicable.

Congressional Review Act

This rule has been determined to be not major for purposes of the Congressional Review Act, 5 U.S.C. 801 *et seq.*

Intergovernmental Review

No intergovernmental consultations with State and local officials is required because the rule is not subject to the provisions of Executive Order 12372 or Executive Order 12875.

Unfunded Mandate Reform Act of 1995

This rule contains no Federal mandates, as that term is defined in the Unfunded Mandates Reform Act, on State, local and tribal governments or the private sector.

Executive Order 13132

This rule does not contain policies having federalism implications requiring preparation of a Federalism Assessment.

Executive Order 12630

This rule does not contain policies that have takings implications.

List of Subjects in 13 CFR Part 400

Administrative practice and procedure, Loan programs—steel, Reporting and recordkeeping requirements.

Jay E. Dittus,

Executive Director, Emergency Steel Guarantee Loan Board.

For the reasons set forth in the preamble, the Emergency Steel Guarantee Loan Board amends 13 CFR part 400 as follows:

PART 400—EMERGENCY STEEL GUARANTEE LOAN PROGRAM

1. The authority citation for part 400 continues to read as follows:

Authority: Pub. L. 106–51, 113 Stat. 255 (15 U.S.C. 1841 note).

2. Section 400.2 is amended by redesignating paragraphs (c) through (k) as paragraphs (d) through (l), by adding a new paragraph (c), and by revising redesignated paragraphs (g) and (h) to read as follows:

§ 400.2 Definitions.

* * * * *

(c) *Agent* means that Lender authorized to take such actions, exercise such powers, and perform such duties on behalf and in representation of all Lenders party to a Guarantee of a single loan, as is required by, or necessarily incidental to, the terms and conditions of the Guarantee.

* * * * *

(g) *Guarantee* means the written agreement between the Board and one or more Lenders, and approved by the Borrower, pursuant to which the Board guarantees repayment of a specified percentage of the principal of the loan, including the Special Terms and Conditions, the General Terms and Conditions, and all exhibits thereto.

(h) *Lender* means a private banking or investment institution, eligible under § 400.201, that is a party to a Guarantee issued by the Board. With respect to a Guarantee of a single loan to which more than one Lender is a party, the term Lender means Agent.

* * * * *

3. Section 400.201 is amended by revising paragraph (a)(2), redesignating paragraphs (b) and (c) as paragraphs (c) and (d), and adding a new paragraph (b) to read as follows:

§ 400.201 Eligible Lender.

(a) * * *

(2) An investment institution, such as an investment bank, commercial finance company, or insurance company, that is currently engaged in commercial lending in the normal course of its business.

(b)(1) If more than one banking or investment institution is applying to the Board for a Guarantee of a single loan, each one of the banking or investment institutions on the application must meet the requirements to be an eligible lender set forth in paragraph (a) of this section.

(2) An application for a Guarantee of a single loan submitted by a group of banking or investment institutions, as described in paragraph (b)(1) of this section, must identify one of the banking or investment institutions applying for such loan to act as agent for all. This agent is responsible for administering the loan and shall have those duties and responsibilities required of an agent, as set forth in the Guarantee.

(3) Each Lender, irrespective of any indemnities or other agreements between the Lenders and the Agent, shall be bound by all actions, and/or failures to act, of the Agent. The Board shall be entitled to rely upon such actions and/or failures to act of the Agent as binding the Lenders.

* * * * *

4. Section 400.205 is amended by revising paragraph (b)(11) to read as follows:

§ 400.205 Application process.

* * * * *

(b) * * *

(11) Documentation sufficient to demonstrate that the Lender is eligible under § 400.201(a) and to allow the Board to make a determination to issue a Guarantee to such Lender as set forth in § 400.201(c).

* * * * *

5. Section 400.210 is amended by revising paragraph (b), by removing the period at the end of paragraph (c)(2)(iv) and adding ''; or'' in its place, and by adding a new paragraph (c)(3) to read as follows:

§ 400.210 Assignment or transfer of loans.

* * * * *

(b) Under no circumstances will the Board permit an assignment or transfer of less than 100 percent of a Lender's interest in the Loan Documents and Guarantee, nor will it permit an assignment or transfer to be made to a party which the Board determines not to be an Eligible Lender pursuant to § 400.201.

(c) * * *

(3) Transfer by a non-Agent Lender of the non-guaranteed portion of the loan after payment under the Guarantee has been made.

6. Section 400.211 is amended by revising paragraphs (b), (c), (e), (f), (g)(1) and (g)(2) to read as follows:

§ 400.211 Lender responsibilities.

* * * * *

(b) *Standard of care.* The Lender shall exercise due care and diligence in administering the loan as would be exercised by a reasonable and prudent banking institution when administering a secured loan of such banking institution's own funds without a Federal guaranty. Such standard shall also apply to any and all approvals, determinations, permissions, acceptances, requirements, or opinion made, given, imposed or reached by Lender.

(c) *Representation to the Board.* In addition to any other representations required by the Guarantee, the Applicant shall represent to the Board that it has the ability to, and will, administer the loan, as well as to exercise the Applicant's rights and pursue its remedies, including conducting any liquidation of the Security or additional Security in full compliance with the standard of care, without the need for any advice, opinion, determination, recommendation, approval, disapproval, assistance (financial or other) or participation by the Board, except where the Board's consent is expressly required by the Guarantee, or where the Board, in its sole discretion and pursuant to the Guarantee, elects to provide same.

* * * * *

(e) *Monitoring.* In accordance with the Guarantee the Lender shall monitor Borrower's performance under the Loan Documents to detect any

noncompliance by the Borrower with any provision thereof.

(f) *Reporting.* With respect to any loan guaranteed by the Board pursuant to the Act and this part the Lender shall provide the Board with the following information, in accordance with the Guarantee:

(1) Audited financial statements for the Borrower;

(2) Projected balance sheet, income statement, and cash flows for the Borrower for each year remaining on the term of the loan; and

(3) A completed signed copy of Form ''Quarterly Compliance Statement'' that includes information on the recent performance of the loan, within 15 days of the end of each calendar quarter.

(g) * * *

(1) Deterioration in the internal risk rating of a loan guaranteed under this Program within 5 business days of such action by the Lender;

(2) The occurrence of each event of default under the Loan Documents or Guarantee promptly, but not later than 5 business days, of the Lender's learning of such occurrence; and

* * * * *

7. Section 400.213 is amended by revising the section heading and paragraph (a) to read as follows:

§ 400.213 Termination of obligations.

(a) The Board, in its discretion, shall be entitled to terminate all, or a portion, of the Board's obligations under the Guarantee, without further cause, in the event that:

(1) The Guarantee fee required by § 400.208(d) shall not have been paid;

(2) A Lender shall have released or covenanted not to sue the Borrower or any other guarantor, or agreed to the modification of any obligation of any party to any agreement related to the loan, without the prior written consent of the Board;

(3) A Lender has released the Board from its liability and obligations under the Guarantee;

(4) A Lender shall have made any incorrect or incomplete representation to the Board in any material respect in connection with the Application, the Guarantee or the Loan Documents;

(5) A Lender fails to make a demand for payment within 30 days of payment default; or

(6) A Lender fails to comply with any material provision of the Loan Documents or the Guarantee.

* * * * *

§ 400.211 [Amended]

8. Section 400.211(g) introductory text is amended by adding the phrase ''H2500,'' immediately after the phrase ''U.S. Department of Commerce,''.

[FR Doc. 00–9991 Filed 4–24–00; 8:45 am]
BILLING CODE 3510–NC–U

EMERGENCY OIL AND GAS GUARANTEED LOAN BOARD

13 CFR Part 500

RIN 3003–ZA00

Emergency Oil and Gas Guaranteed Loan Program; Conforming Changes

AGENCY: Emergency Oil and Gas Guaranteed Loan Board.

ACTION: Final rule.

SUMMARY: The Emergency Oil and Gas Guaranteed Loan Board (Board) is amending the regulations governing the Emergency Oil and Gas Guaranteed Loan Program (Program). These changes are meant to conform the regulations and the guarantee agreement that will be used for the program. The intent of these changes is to eliminate potential ambiguities or unintended conflicts between the language of the regulations and that of the Guarantee agreement. This rule also makes several technical changes to merely conform the regulations with the standard of care adopted by the Board, to conform the regulations to the form of the Guarantee and form of Application for Guarantee adopted by the Board, correct minor typographical errors and add a mail stop to the Board's mailing address, or to clarify the allocation of Lender responsibilities, liabilities and restrictions in circumstances where more than one lender are parties to the Guarantee.

DATES: This rule is effective April 25, 2000.

FOR FURTHER INFORMATION CONTACT: Charles E. Hall, Executive Director, Emergency Oil and Gas Guaranteed Loan Board, U.S. Department of Commerce, Room H2500, Washington, DC 20230, (202) 219–0584.

SUPPLEMENTARY INFORMATION: On October 27, 1999, the Board published a final rule codifying at Chapter 5, Title 13, Code of Federal Regulations (CFR), regulations implementing the Program, as established in Chapter 1 of Public Law 106–51, the Emergency Oil and Gas Guaranteed Loan Act of 1999 (64 FR 57946).

Section 500.2 sets forth certain definitions applicable to the Program. This rule adds a definition of ''Agent'', a term used in the Guarantee to refer to the applicant lender that is designated to perform certain duties on behalf of all lenders where more than one lender are parties to a Guarantee.

This rule also modifies the definition of ''Guarantee'' in § 500.2 to make clear that more than one lender may be parties to a Guarantee. The definition of ''Lender'' in § 500.2 is also modified to specify that in a multi-lender Guarantee, the term ''Lender'' means ''Agent''.

Section 500.201 of the Board's regulations sets forth the definition of an eligible lender for purposes of the Act and the factors that the Board will assess in determining whether the Board should issue a Guarantee to a particular applicant lender. The Board is amending this section of its regulations to clarify that multiple lenders under one application for a guarantee must each meet the Eligible Lender requirements, to require that an application for guarantee from more than one lender identify the lender that will act as Agent, and to set forth the respective responsibilities and liabilities of individual lenders, where more than one lender are parties to a Guarantee.

Section 500.205 of the Board's regulations specifies the information and documentation to be contained in an application for guarantee. The section is being modified to include a reference to documentation demonstrating that the lender is eligible under § 500.201(a) and to allow the Board to make a determination to issue the guarantee to such lender under § 500.201(c), as required by paragraph 36 of the Board's form of Application for Guarantee.

Section 500.210 of the Board's regulations sets forth restrictions and limitations on transfer of interests in a guaranteed loan. The section has been revised to reflect the fact that there may be multiple lenders that are parties to a Guarantee, and to allow transfer by a non-Agent lender of the non-guaranteed portion of a loan after payment under the Guarantee has been made.

Section 500.211 sets forth lender responsibilities under the Program. Paragraph (b) of this section sets forth a standard of care applicable to actions taken by a lender. Specifically, the regulations state:

> The Lender shall exercise due care and diligence in administering the loan as would be exercised by a *responsible* and prudent banking institution when administering a secured loan of such banking institution's own funds without a Federal guaranty. Such standard shall also apply to any and all approvals, determinations, permissions, acceptances, requirements, or opinion made, given, imposed or reached by Lender. (emphasis added).

Subsequent to publication of the final rule, the Board has been informed that

the formulation of the standard of care commonly used among commercial lenders requires the exercise of due care and diligence in administering the loan as would be exercised by a *reasonable* and prudent banking institution. (emphasis added). As such, the Board is amending its regulations to include the word ''reasonable'' in lieu of ''responsible'' as that is the term accepted and understood by commercial lenders to express the standard of care.

Paragraph (c) of § 500.211 requires a representation and agreement by the lender that it is able to, and will, administer the loan in accordance with the applicable standard of care. The paragraph has been modified to limit the representation and agreement to the applicant lender where there are multiple lenders that are parties to a Guarantee.

Paragraph (e) of § 500.211 specifies lender obligations with respect to loan monitoring. The paragraph is being amended to eliminate a requirement for best efforts to cause Borrower correction of any noncompliance with loan documents, because it is inconsistent with the ''reasonable and prudent'' standard of care that has been adopted by the Board.

Paragraph (f) of § 500.211 sets forth reporting requirements concerning guaranteed loans. The paragraph has been modified to eliminate certain references to specific due dates for reporting and instead refer to the terms of the Guarantee for such dates.

Paragraph (g) of § 500.211 states, in relevant part, that the Lender must notify the Board in writing without delay of the deterioration in the internal risk rating of a loan guaranteed under the Program within 3 business days of such action by the Lender; and the occurrence of each event of default under the Loan Documents or Guarantee promptly, but not later than 3 business days, of the Lender's learning of such occurrence. This rule merely changes, from three days to five days, the time within which the lender must provide notification of these events to the Board. This change is being made to provide lenders additional time to both discover and report the listed events.

Section 500.213 of the Board's regulations specifies the circumstances under which the Board in its discretion shall be entitled to terminate a guarantee. The section has been modified to conform to the form of Guarantee adopted by the Board by eliminating a reference to the possibility that a Guarantee might be executed before loan closing, eliminating a requirement for written notice of termination, and providing for partial as well as entire termination of a guarantee where there are multiple lenders that are parties to a Guarantee.

This rule does not affect a substantive change to the existing regulations. The government will hold lenders to the same standard of care using the term ''reasonable'' as it would have using the term ''responsible.'' This change is meant to clarify the regulations by using a term familiar to the lending community to express that standard of care. With regard to the time by which a lender must notify the Board of certain events, this rule does not change the events requiring notification, it merely changes the maximum time, from three days to five days, by which such reports must be made. The other changes merely conform the regulations with the standard of care adopted by the Board, conform the regulations to the form of Guarantee and form of Application for Guarantee adopted by the Board, correct a typographical error, or clarify the allocation of Lender responsibilities, liabilities and restrictions in circumstances where more than one lender are parties to a Guarantee.

Administrative Law Requirements

Executive Order 12866

This final rule has been determined not to be significant for purposes of Executive Order 12866.

Administrative Procedure Act

This rule is exempt from the rulemaking requirements contained in 5 U.S.C. 553 pursuant to authority contained in 5 U.S.C. 553(a)(2) as it involves a matter relating to loans. As such, prior notice and an opportunity for public comment and a delay in effective date otherwise required under 5 U.S.C. 553 are inapplicable to this rule.

Regulatory Flexibility Act

Because this rule is not subject to a requirement to provide prior notice and an opportunity for public comment pursuant to 5 U.S.C. 553, or any other law, the analytical requirements of the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.*, are inapplicable.

Congressional Review Act

This rule has been determined to be not major for purposes of the Congressional Review Act, 5 U.S.C. 801 *et seq.*

Intergovernmental Review

No intergovernmental consultations with State and local officials is required because the rule is not subject to the provisions of Executive Order 12372 or Executive Order 12875.

Unfunded Mandate Reform Act of 1995

This rule contains no Federal mandates, as that term is defined in the Unfunded Mandates Reform Act, on State, local and tribal governments or the private sector.

Executive Order 13132

This rule does not contain policies having federalism implications requiring preparation of a Federalism Assessment.

Executive Order 12630

This rule does not contain policies that have takings implications.

List of Subjects in 13 CFR Part 500

Administrative practice and procedure, Loan programs—oil and gas, Reporting and recordkeeping requirements.

Charles E. Hall,

Executive Director, Emergency Oil and Gas Guaranteed Loan Board.

For the reasons set forth in the preamble, the Emergency Oil and Gas Guaranteed Loan Board amends 13 CFR part 500 as follows:

PART 500—EMERGENCY OIL AND GAS GUARANTEED LOAN PROGRAM

1. The authority citation for part 500 continues to read as follows:

Authority: Pub. L. 106–51, 113 Stat. 255 (15 U.S.C. 1841 note).

2. Section 500.2 is amended by redesignating paragraphs (c) through (k) as paragraphs (d) through (l), by adding a new paragraph (c), and by revising redesignated paragraphs (g) and (h) to read as follows:

§ 500.2 Definitions.

* * * * *

(c) *Agent* means that Lender authorized to take such actions, exercise such powers, and perform such duties on behalf and in representation of all Lenders party to a Guarantee of a single loan, as is required by, or necessarily incidental to, the terms and conditions of the Guarantee.

* * * * *

(g) *Guarantee* means the written agreement between the Board and one or more Lenders, and approved by the Borrower, pursuant to which the Board guarantees repayment of a specified percentage of the principal of the loan, including the Special Terms and Conditions, the General Terms and Conditions, and all exhibits thereto.

(h) *Lender* means a private banking or investment institution, eligible under § 500.201, that is a party to a Guarantee

issued by the Board. With respect to a Guarantee of a single loan to which more than one Lender is a party, the term Lender means Agent.

* * * * *

3. Section 500.201 is amended by redesignating paragraphs (b) and (c) as paragraphs (c) and (d) and adding a new paragraph (b) to read as follows:

§ 500.201 Eligible Lender.

* * * * *

(b)(1) If more than one banking or investment institution is applying to the Board for a Guarantee of a single loan, each one of the banking or investment institutions on the application must meet the requirements to be an eligible lender set forth in paragraph (a) of this section.

(2) An application for a Guarantee of a single loan submitted by a group of banking or investment institutions, as described in paragraph (b)(1) of this section, must identify one of the banking or investment institutions applying for such loan to act as agent for all. This agent is responsible for administering the loan and shall have those duties and responsibilities required of an agent, as set forth in the Guarantee.

(3) Each Lender, irrespective of any indemnities or other agreements between the Lenders and the Agent, shall be bound by all actions, and/or failures to act, of the Agent. The Board shall be entitled to rely upon such actions and/or failures to act of the Agent as binding the Lenders.

* * * * *

4. Section 500.205 is amended by revising paragraph (b)(11) to read as follows

§ 500.205 Application process.

* * * * *

(b) * * *

(11) Documentation sufficient to demonstrate that the Lender is eligible under § 500.201(a) and to allow the Board to make a determination to issue a Guarantee to such Lender as set forth in § 500.201(c).

* * * * *

5. Section 500.210 is amended by revising paragraph (b), by removing the period at end of paragraph (c)(2)(iv) and adding ''; or'' in its place, and by adding a new paragraph (c)(3) to read as follows:

§ 500.210 Assignment or transfer of loans.

* * * * *

(b) Under no circumstances will the Board permit an assignment or transfer of less than 100 percent of a Lender's interest in the Loan Documents and Guarantee, nor will it permit an assignment or transfer to be made to a party which the Board determines not to be an Eligible Lender pursuant to § 500.201.

(c) * * *

(3) Transfer by a non-Agent Lender of the non-guaranteed portion of the loan after payment under the Guarantee has been made.

6. Section 500.211 is amended by revising paragraphs (b), (c), (e), (f), (g)(1) and (g)(2) to read as follows:

§ 500.211 Lender responsibilities.

* * * * *

(b) *Standard of care*. The Lender shall exercise due care and diligence in administering the loan as would be exercised by a reasonable and prudent banking institution when administering a secured loan of such banking institution's own funds without a Federal guaranty. Such standard shall also apply to any and all approvals, determinations, permissions, acceptances, requirements, or opinion made, given, imposed or reached by Lender.

(c) *Representation to the Board*. In addition to any other representations required by the Guarantee, the Applicant shall represent to the Board that it has the ability to, and will, administer the loan, as well as to exercise the Applicant's rights and pursue its remedies, including conducting any liquidation of the Security or additional Security in full compliance with the standard of care, without the need for any advice, opinion, determination, recommendation, approval, disapproval, assistance (financial or other) or participation by the Board, except where the Board's consent is expressly required by the Guarantee, or where the Board, in its sole discretion and pursuant to the Guarantee, elects to provide same.

* * * * *

(e) *Monitoring*. In accordance with the Guarantee the Lender shall monitor Borrower's performance under the Loan Documents to detect any noncompliance by the Borrower with any provision thereof.

(f) *Reporting*. With respect to any loan guaranteed by the Board pursuant to the Act and this part the Lender shall provide the Board with the following information, in accordance with the Guarantee:

(1) Audited financial statements for the Borrower;

(2) Projected balance sheet, income statement, and cash flows for the Borrower for each year remaining on the term of the loan; and

(3) A completed signed copy of Form ''Quarterly Compliance Statement'' that includes information on the recent performance of the loan, within 15 days of the end of each calendar quarter.

(g) * * *

(1) Deterioration in the internal risk rating of a loan guaranteed under this Program within 5 business days of such action by the Lender;

(2) The occurrence of each event of default under the Loan Documents or Guarantee promptly, but not later than 5 business days, of the Lender's learning of such occurrence; and

* * * * *

7. Section 500.213 is amended by revising the section heading and paragraph (a) to read as follows:

§ 500.213 Termination of obligations.

(a) The Board, in its discretion, shall be entitled to terminate all, or a portion, of the Board's obligations under the Guarantee, without further cause, in the event that:

(1) The Guarantee fee required by § 500.208(d) shall not have been paid;

(2) A Lender shall have released or covenanted not to sue the Borrower or any other guarantor, or agreed to the modification of any obligation of any party to any agreement related to the loan, without the prior written consent of the Board;

(3) A Lender has released the Board from its liability and obligations under the Guarantee;

(4) A Lender shall have made any incorrect or incomplete representation to the Board in any material respect in connection with the Application, the Guarantee or the Loan Documents;

(5) A Lender fails to make a demand for payment within 30 days of payment default; or

(6) A Lender fails to comply with any material provision of the Loan Documents or the Guarantee.

* * * * *

§ 500.211 [Amended]

8. Section 500.211(g) introductory text is amended by adding the phrase ''H2500,'' immediately after the phrase ''U.S. Department of Commerce,''.

[FR Doc. 00–9992 Filed 4–24–00; 8:45 am]

BILLING CODE 3510–NC–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Parts 91, 121, 125, and 129

[Docket No. 29104; Amendment Nos. 91–264, 121–275, 125–33 & 129–28]

RIN 2120–AF81

Repair Assessment for Pressurized Fuselages

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action requires operators of certain transport category airplanes to incorporate repair assessment guidelines for the fuselage pressure boundary into their FAA-approved maintenance or inspection program. This action is the result of concern for the continued operational safety of airplanes that are approaching or have exceeded their design service goal. The purpose of the repair assessment guidelines is to establish a damage-tolerance based supplement inspection program for repairs to detect damage, which may develop in a repaired area, before that damage degrades the load carrying capability of the structure below the levels required by the applicable airworthiness standards.

EFFECTIVE DATE: May 25, 2000.

FOR FURTHER INFORMATION CONTACT: Brent Bandley, Los Angeles Aircraft Certification Office, Airframe Branch, ANM–120L, Transport Airplane Directorate, Federal Aviation Administration, 3960 Paramount Boulevard, Lakewood, California 90712–4137, telephone (562) 627–5237, fax (562) 627–5210.

SUPPLEMENTARY INFORMATION:

Availability of Final Rules

An electronic copy of this document may be downloaded using a modem and suitable communications software from the FAA regulations section of the FedWorld electronic bulletin board service (telephone: 703–321–3339), or the Government Printing Office's (GPO's) electronic bulletin board service (telephone: (202) 512–1661).

Internet users may reach the FAA's web page at *http://www.faa.gov/avr/arm/nprm/nprm.htm* or the (GPO) **Federal Register** web page at *http://www.access.gpo.gov/nara* for access to recently published rulemaking documents.

Any person may obtain a copy of this document by submitting a request to the Federal Aviation Administration, Office of Rulemaking, ARM–1, 800 Independence Avenue SW., Washington, DC 20591, or by calling (202) 267–9680. Communications must identify the amendment or docket number of this final rule.

Persons interested in being placed on a mailing list for future rulemaking documents should request from the above office a copy of Advisory Circular No. 11–2A, ''Notice of Proposed Rulemaking Distribution System,'' which describes the application procedure.

Small Business Regulatory Enforcement Fairness Act

The Small Business Regulatory Enforcement Fairness Act (SBREFA) of 1996, requires the FAA to comply with small entity requests for information or advice about compliance with statutes and regulations within our jurisdiction. Therefore, any small entity that has a question regarding this document may contact their local FAA official Internet users can find additional information on SBREFA on the FAA's web page at *http://faa.gov/avr/arm/sbrefa/htm* and may send electronic inquires to the following Internet address: *9–AWA–SBREFA@faa.gov.*

Background

On December 22, 1998, the FAA issued Notice of Proposed Rulemaking (NPRM) 97–16, which was published in the **Federal Register** on January 2, 1998 (98 FR 126). That NPRM proposed to prohibit the operation of certain transport category airplanes (operated under 14 CFR parts 91, 121, 125, and 129) beyond a specified time, unless the operator of the airplane incorporated FAA-approved ''repair assessment guidelines'' into its approved maintenance inspection program. The FAA provided a period of 90 days for the public to submit input on the proposed rule. On April 3, 1998 (63 FR 16452), the FAA reopened the period for public comment for an additional 90 days. (A discussion of the comments received in response to the NPRM appears below.)

The repair assessment guidelines, which are to be approved by the FAA for each airplane model affected by this rule, contain:

- A methodology for assessing the types of repairs expected to be found in the fuselage pressure boundary (fuselage skins, bulkhead webs, and door skin), and
- Methods to determine the damage-tolerance characteristics of the surveyed repairs.

Each of the guidelines contains repetitive repair inspection intervals that are based on residual strength, crack growth, and inspectability evaluations, and are closely compatible with typical operator maintenance practices (*i.e.,* C-checks, D-Checks, etc.).

In addition to this final rule, the FAA has developed an associated advisory circular (AC), ''Repair Assessment of pressurized Fuselages.'' The AC provides guidance for operators of the affected transport category airplanes on how to incorporate FAA-approved repair assessment guidelines into their FAA-approved maintenanced or inspection program as a means to comply with this final rule. Availability of the AC will be announced in **Federal Register** in the near future.

Issues Prompting This Rulemaking Activity

In April 1988, a high-cycle transport airplane enroute from Hilo to Honolulu, Hawaii, suffered major structural damage to its pressurized fuselage during flight. This accident was attributed in part to the age of the airplane involved. The economic benefit of operating certain older technology airplanes has resulted in the operation of many such airplanes beyond their previously projected retirement age. Because of the problems revealed by the accident in Hawaii and the continued operation of older airplanes, both the FAA and industry generally agreed that increased attention needed to be focused on the aging fleet and on maintaining its continued operational safety.

In June 1988, the FAA sponsored a conference on aging airplanes. As a result of that conference, the FAA established a task force in August 1988 as a sub-group of the FAA's Research, Engineering, the Development Advisory Committee, representing the interests of the aircraft operators, aircraft manufacturers, regulatory authorities, and other aviation representatives. The task force, then known as the Airworthiness Assurance Task Force (AATF), set forth five major elements of a program for each airplane model in the aging transport fleet that would serve to keep the aging fleet safe:

- Select service bulletins describing modificaitons and inspections necessary to maintain structural integrity;
- Develop inspection and prevention programs to address corrosion;
- Develop generic structural maintenance program guidelines for aging airplanes;
- Review and update the Supplemental Structural Inspection Documents (SSID) which describe inspection programs to detect fatigue cracking, and
- Assess damage-tolerance of structural repairs.

By **Federal Register** notice, dated November 30, 1992 (57 FR 56627), the

AATF was placed under the auspices of the Aviation Rulemaking Advisory Committee (ARAC) and renamed as the Airworthiness Assurance Working Group (AAWG). Structures Task Groups, sponsored by the AAWG, were assigned the task of developing the five elements into workable programs. The AAWG completed work on the first four of the elements lists above at the time Notice 97–16 was issued. Issuance of this final rule completes the fifth element.

This final rule addresses the specific task assigned to the AAWG relevant to the fifth element, which was to develop recommendations concerning whether new or revised requirements and compliance methods for structural repair assessments of existing repairs should be initiated and mandated for the following airplanes.

- Airbus Model A300 (excluding the -600 series);
- British Aerospace Model BAC 1–11;
- Boeing Models 707/720, 727, 737, and 747;
- McDonnell Douglas Models DC–8, DC–9/MD–80, and DC–10;
- Fokker Model F–28;and
- Lockheed Model L–1011.

Related Regulatory Activity

In addition to these initiatives, there are other on-going activities associated with FAA's Aging Aircraft Program.

The Aging Aircraft Safety Act of 1991 (Public Law 49 U.S.C. 44717) instructed the FAA Administrator to prescribe regulations that will ensure the continuing airworthiness of aging aircraft through inspections and reviews of the maintenance record of each aircraft an air carrier uses in air transportation. In response, the FAA published Notice 93–14 (58 FR 51944, October 5, 1993)). Among other things, that notice proposed to require operators to.

- Certify aging airplane maintenance actions;
- Establish a framework for imposing operational limits on certain airplanes; and
- Perform additional maintenance actions, such as inspections or parts replacements, in order to continue operating the airplane.

The FAA subsequently withdraw Notice 94–14, and issued a new Notice 99–02 (64 FR 16298, April 2, 1999). The new notice proposes to require that all airplanes operating under parts 121, 129, and 135 undergo records reviews and inspection after their 14th year in service to ensure that the maintenance of these airplanes' age-sensitive parts and components has been adequate and timely. The proposed new rule also would prohibit operation of these airplanes after specified deadlines, unless damage-tolerance-based inspections and procedures are included in their maintenance or inspection program. The period or public comment on the proposal ended on August 2, 1999, and the FAA anticipates regulatory action in the near future.

In addition, the FAA has found that some operators do not have a programmatic approach to corrosion prevention and control programs (CPCP). In its accident investigation report (NTSB/AAR–89/03) on the Hawaii accident, the NTSB recommended that the FAA mandate a comprehensive and systematic CPCP. Therefore, the FAA is considering rulemaking to mandate CPCP's for all airplanes used in air transportation. As part of that deliberation, the FAA is considering the CPCP's recommended by the AATF and previously mandated by the FAA through airworthiness directives (AD); all of the airplanes affected by this proposal currently are subject to those AD's.

The Concern Posed by Older Repairs

The basic structure of the large jet transports that are affected by this final rule was required at the time of original certification to meet the applicable regulatory standards for fatigue or fail-safe strength. Repairs and modifications to this structure also were required to meet these same standards. The early fatigue or fail-safe requirements, however, did not provide for timely inspection of critical structure so that damaged or failed components could be dependably identified and repaired or replaced before a hazardous condition developed.

By amendment 25–45 (43 FR 46242, October 5, 1978), the FAA amended § 25.571 (''Damage-tolerance and fatigue evaluation of structure'') by introducing a new certification requirement called ''damaged-tolerance'' to assure the continued structural integrity of transport category airplanes certificated after that time. Additionally, for existing designs, guidance material based on that amendment was published in 1981 as Advisory Circular (AC 91–56), ''Supplemental Structural Inspection Program for Large Transport Category Airplanes.''

Damage-tolerance is a structural design and inspection methodology used to maintain safety, considering the possibility of metal fatigue or other structural damage (*i.e.,* safety is maintained by adequate structural inspection until the damage is repaired). The underlying principle for damage-tolerance is that the initiation and growth of structural fatigue damage can be anticipated with sufficient precision to allow inspection programs to safely detect damage before it reaches a critical size. A damage-tolerance evaluation entails.

- The prediction of sites where fatigue cracks are most likely to initiate in the airplane structure;
- The prediction of the crack growth under repeated airplane structural loading;
- The prediction of the size of the damage at which strength limits are exceeded; and
- An analysis of the potential opportunities for inspection of the damage as it progress.

Information from the evaluation is used to establish an inspection program for structure, which, if rigorously followed, will be able to detect cracking that may develop before it precipitates a major structural failure. The evidence to date is that, when all critical structure is included, the damage-tolerance concept and the supplemental inspection programs that are based on it provide the best assurance of continued structural integrity that currently is available.

In order to apply the damage tolerance concept to existing transport airplanes, the FAA issued a series of AD's, beginning in 1984, that require operators to comply with supplemental structure inspection programs resulting from the concept's application to existing airplanes. Nearly all of the airplane models affected by this final rule currently are subject to such AD's. Generally, those AD's require that operators incorporate Supplemental Structural Inspection Documents (SSID) into their maintenance programs for the affected airplanes. These documents were derived from damage-tolerance assessments of the originally-certificate type designs for these airplanes. For this reason, the majority of AD's written for the SSID program did not attempt to address issues relating to the damage-tolerance of repairs that had been made to the airplanes. The objective of this final rule is to provide that same level of assurance for areas of the structure that have been repaired.

Repairs are a concern on older airplanes because of the possibility that they may develop, cause, or obscure metal fatigue, corrosion, or other damage during service. This damage might occur within the repair itself or in the adjacent structure, and might ultimately lead to structural failure. The damage-tolerance evaluation of a repair would be used in an assessment program to establish an appropriate inspection program, or a replacement schedule if the necessary inspection program is too demanding or not possible. The objective of the repair

assessment is to assure the continued structural integrity of the repaired and adjacent structure based on damage-tolerance principles.

In general, repairs present a more challenging problem to solve than the original structure because each repair is unique and tailored in design to correct particular damage to the original structure. Whereas the performance of the original structure may be predicted from tests and from experience on other airplanes in service, the behavior of a repair and its effect on the fatigue characteristics of the original structure are generally not known to the same extent as for the basic unrepaired structure.

The available service record and surveys of out-of-service and in-service airplanes have indicated that existing repairs generally perform well. Although the cause of an airplane accident has never been attributed to properly applied repairs using the original repair data, repairs may be of concern as time-in-service increases for the following reasons:

1. As airplane age, both the number and age of the existing repairs increase. Along with this increase is the possibility of unforeseen repair interaction, autogenous failure, or other damage occurring in the repaired area. The continued operational safety of these airplanes depends primarily on a satisfactory maintenance program (inspections conducted at the right time, in the right place, using the most appropriate technique). To develop this program, a damage-tolerance evaluation of repairs to flight critical structure is essential. The longer an airplane is in service, the more important this evaluation and a subsequent inspection program become.

2. The practice of damage-tolerance methodology has evolved gradually over the last 20 or more years. Some repair described in the airplane manufacturers' Structural Repair Manuals (SRM) were not designed to current standards. Repairs accomplished in accordance with the information contained in the early versions of the SRM's may require additional inspections if evaluated using the current methodology.

3. Because a regulatory requirement for damage-tolerance was not applied to airplane designs type certificated before 1978, the damage-tolerance characteristics of repairs may vary widely and are largely unknown.

Development of ''Repair Assessment Guidelines''

To address the ARAC assignment relative to repairs, the AAWG tasked the manufacturers to develop ''repair assessment guidelines (RAG)'' requiring specific maintenance programs to maintain the damage-tolerance integrity of the basic airframe. The following criteria were developed to assist the manufacturers in the development of the guidance material:

- Repairs that do not conform to SRM standards must be reviewed and may require further action.
- Repairs must be reviewed where the repair has been installed in accordance with SRM data that have been superseded or rendered inactive by new damage-tolerant designs.
- Repairs that are in close proximity to other repairs or modifications require review to determine their impact on the continued airworthiness of the airplane.
- Repairs that exhibit structural distress should be replaced before flight.

To identify the scope of the overall program, fleet data were required. This resulted in the development of a five-step program to develop factual data for the development of the rule. The five-step AAWG program consisted of:

Step 1. Development of model specific RAG's using AAWG repair criteria.

Step 2. Completion of a survey of a number of operators' airplanes to assess fuselage skin repairs and to validate the approach of the manufacturer's RAG.

Step 3. Determination of the need for and the development of a worldwide survey.

Step 4. Collection and assessment of results to determine further necessary actions.

Step 5. Development of specific manufacturer/operator/FAA actions.

Early in the development of this task, each manufacturer began to prepare model-specific RAG's. When sufficiently developed, these draft guidelines were shared with the operators to get feedback on acceptability and suggestions for improvement. The operators stressed the need for commonality in approach and ease of use of the guidelines. They also expressed the need for guidelines that could be used on the shop floor without engineering assistance and without extensive training.

Meanwhile, the AAWG conducted two separate surveys of existing repairs on airplanes to collect necessary data. The first survey was conducted in March 1992 on certain large transport category airplanes being held in storage. Teams comprised of engineering representatives from various organizations, including FAA's Aircraft Certification and Flight Standards offices, operators, and manufacturers, surveyed 356 external fuselage skin repairs on 30 airplanes of 6 types. Using repair classification criteria developed by the individual airplane manufacturers, the teams concluded that the general quality of the repairs appeared good. Forty percent of the repairs were adequate, requiring no supplemental inspections, and sixty percent needed a more comprehensive damage-tolerance based assessment, with the possibility that supplemental inspections might be needed. Some determining factors on the need for further assessment were the size of the repair and its proximity to other repairs. While the survey sample size was very small compared to the total population of transport airplanes type certificated prior to 1978, it provided objective information on the quality and damage-tolerance characteristics of existing airplane repairs.

In 1994, the AAWG requested that the manufacturers conduct a second survey on airplane repairs to validate the 1992 results and to provide additional information relative to the estimated cost of the assessment program. The manufacturers were requested to visit airplanes that were operating their products and to conduct surveys on airplanes that were currently undergoing heavy maintenance. An additional 35 airplanes were surveyed in which 695 repairs were evaluated. This survey was expanded to include all areas of the airframe. The evaluation revealed substantially similar results to the 1992 results: forty percent of the repairs were classified as adequate, and sixty percent of the repairs required consideration for additional supplemental inspection during service. In addition, only a small number of repairs (less than 10 percent) were found on portions of the airframe other than the external fuselage skin.

The AAWG proposed that the repair assessment be initially limited to the fuselage pressure boundary; if necessary, future rulemaking would address the remaining primary structure. This limitation was based on two considerations:

First, the fuselage is more sensitive to structural fatigue than other airplane structure because its normal operating loads are closer to its limit design loads. Stresses in a fuselage are primarily governed by the pressure relief valve settings of the environmental control system, and these are less variable from flight to flight than the gust or maneuver loads that typically determine the design stresses in other structure.

Second, the fuselage is more prone to damage from ground service equipment than other structure and requires repair more often. The result of the second survey described above supports the

conclusion that repairs to the fuselage are far more frequent than to any other structure.

Determining Which Airplanes Should Be Affected

This final rule and the repair assessment guidelines apply to 11 large transport category airplane models. (In the original ARAC task, the Boeing Models 707 and 720 were counted as one model. This final rule addresses the 707 and 720 models separately due to their different flight cycle implementation times.) The reason for this limitation is that the original tasking to the ARAC limited the scope of the work to the 11 oldest models of large transport category airplanes then in regular service. This tasking identified those airplanes for which the great concern exists as to the status of primary structure repairs. Derivatives of the original airplane models are covered to the extent that the structure has not been upgraded to meet damage-tolerance requirements.

Those transport category airplanes that have been certificated to regulatory standards that include the requirements for damage-tolerance structure under § 25.571 are not included in this rulemaking action. These later requirements make it incumbent on the operating certificate holder to return the structure to the original certification basis by installing only those repair that meet the airplane's damage-tolerance certification basis. The AAWG, in its final report on this subject, did recommend continued monitoring of repairs on the newer airplanes, with the possibility of additional rulemaking if conditions warrant. (A copy of the AAWG's final report is included in the public docket for this rulemaking).

It was from this activity that the AAWG and manufacturers recognized not only the need for a RAG document for each affected model, but a SRM updated to include the results of a damage-tolerance assessment.

Considerations in Developing and Mandating Repair Assessment Guidelines

In considering the establishment of RAG's, the AAWG recognized that the guidelines would add to existing repair approval data and, in some cases, may even appear to be in conflict with that data. All repairs assessed under the requirements of this final rule should have been previously approved by the FAA using an FAA using an FAA-approved SRM, an FAA-approved Service Bulletin, or a repair scheme approved by either an FAA Designated Engineering Representative or an SFAR 36 authorization holder. To avoid the appearance of conflicts between FAA approved data sources, the manufacturers have agreed to update the affected SRM's, as well as repairs identified in Service Bulletins, to determine requirements for supplemental inspections, if not already addressed.

Another consideration was that structural modifications and repairs mandated by AD's do not always contain instructions for future supplemental inspection requirements. The manufacturers have agreed to evaluate the need for post modification inspections for these mandated modifications and repairs. A list of Service Bulletins that are the subject of AD's will be contained in the model-specific RAG documents, with required post-modification/repair inspection programs, as appropriate. A list of other structural Service Bulletins will be provided in the model-specific RAG document, with associated inspection thresholds and repeat intervals. The manufacturers have agreed to complete their review of Service Bulletins related to skin repairs in conjunction with the initial SRM updates.

These agreements notwithstanding, there is still a possibility that the requirements in the RAG document will not agree with those in an AD, especially if the AD was written to address a modification to the airplane made by someone other than the original manufacturer. Federal Aviation Regulations require that compliance be shown with both the AD and this final rule. Such dual compliance can be avoided in the longer term by working with the manufacturer, if that is the source of difficulty, or by securing an Alternative Method of Compliance (AMOC) to the AD. In the short term, compliance with the earlier threshold, shorter repeat inspection interval or more stringent rework/replace schedule would always constitute compliance with the less stringent requirement. Thus, the operator would not be faced with an unresolvable conflict.

Another consideration, and one that the AATF originally recommended, was that the use of RAG's be mandated by an AD. The FAA concluded that an unsafe condition necessitating AD action had not been established for repairs, and this position is supported by both repair surveys. However, the FAA also considered, and the AAWG agreed, that the long term concern with repairs on older airplanes, as described earlier, does warrant regulatory action, and this final rule addresses that concern.

The AAWG also recognized that the concerns discussed above for the safety of existing repairs also would apply to the long-term safety of future repairs to these airplanes. Therefore, the AAWG considered that new repairs also should be subject to damage-tolerance assessments. It is expected that most new repairs will be installed in accordance with an FAA-approved SRM that has been updated to include this damage-tolerance assessment. However, in the event that a new repair is installed for which no such assessment has been made or is available, the repair assessment guidelines prepared to meet the requirements of this final rule should be used. The intent of this final rule is that all repairs to the fuselage pressure boundary will be evaluated for damage-tolerance, and that any resulting inspection schedule will be specified and the work accomplished, regardless of when, where, or by whom the repair was installed.

Development of Repair Assessment Methodology

The next step in the AAGW's program for this task was to develop a repair assessment methodology that is effective in evaluating the continued airworthiness of existing repairs for the fuselage pressure boundary on affected transport category airplane models. Older airplane models may have many structural repairs, so the efficiency of the assessment procedure is an important consideration. In the past, evaluation of repairs for damage-tolerance would require direct assistance from the manufacturer. The size of an assessment task conducted in that way would be unmanageable considering that:

- Each repair design is different,
- Each airplane model is different,
- Each area of the airplane is subjected to a different loading environemnt, and
- The number of engineers qualified to perform a damage-tolerance assessment is small.

Therefore, a new approach was developed.

Since repair assessment results will depend on the model-specific structure and loading environment, the manufacturers were tasked to create an assessment methodology for the types of repairs expected to be found on each affected airplane model. Since the records on most of these repairs are not readily available, locating the repairs necessitates surveying the structure of each airplane. A survey form was created that may be used to record key repair design features needed to accomplish a repair assessment. Airline

personnel not trained as damage-tolerance specialists can use the form to document the configuration of each observed repair.

Using the information gathered during the survey as input data, the manufacturers have developed simplified methods to determine the damage-tolerance characteristics of the surveyed repairs. Although the repair assessments should be performed by well-trained personnel familiar with the model specific repair assessment guidelines, these methods enable an engineer or technician, not trained as a damage-tolerance specialist, to perform the repair assessment without the assistance of the manufacturer.

From the information gathered during the survey, it is also possible to classify repairs into one of three categories:

Category A: A permanent repair for which the baseline zonal inspection (BZI), (typical maintenance inspection intervals assumed to be performed by most operators), is adequate to ensure continued airworthiness (inspectability) equal to the unrepaired surrounding structure.

Category B: A permanent repair that requires supplemental inspections to ensure continued airworthiness.

Category C: A temporary repair that will need to be reworked or replaced prior to an established time limit. Supplemental inspections may be necessary to ensure continued airworthiness prior to this limit.

The airplane manufacturers generated this methodology and are preparing model-specific repair assessment guidelines for the 11 aging airplane models affected by this final rule. The manufacturers chose to produce the model-specific repair assessment guidelines for the older models first, and to produce those for the newer models as those airplanes get closer in age to the implementation time. (Operators should be in contact with the manufacturers to obtain a schedule of when the repair assessment guidelines will be prepared for their specific airplane models.) Uniformity and similarity of these repair assessment procedures between models has been an important factor to consider in simplifying operator workload. The manufacturers have spent considerable time over the last several years to achieve commonality of the repair assessment process.

The inspection intervals contained in the FAA-approved model specific RAG documents are based on residual strength, crack growth, and inspectability evaluations. The manufacturers have endeavored to make the inspection methods and intervals compatible with typical operator maintenance practice. Thus, internal inspections would be acceptable at flight cycle limits that are equivalent to D-check intervals, while simpler external inspections could be accommodated at flight cycle limits that are generally equivalent to C-check intervals. If the inspection method and intervals for a given repair are not compatible with the operator's maintenance schedule, the repair could be replaced with a more damage-tolerant repair.

These guidelines can also be used for evaluating the damage-tolerance characteristics of new repair for continued airworthiness.

Related Activity Affecting Structural Repair Manuals

In order to further facilitate the assessment process, the manufacturers have agreed to update model-specific SRM's to reflect damage-tolerance repair considerations. Their goal is to complete these updates by the first revision cycle of the model-specific SRM after the release of the associated RAG document. Consistent with the results of the surveys, only fuselage pressure boundary repairs are under consideration.

The general section of each SRM, Chapter 51, will contain brief descriptions of damage-tolerance considerations, categories of repairs, description of baseline zonal inspections, and the repair assessment logic diagram. Chapter 53 of the SRM for pressurized fuselage skin will be updated to identify repair categories and related information.

In updating each SRM, existing location-specific repairs should be labeled with appropriate repair category identification (A, B, or C), and specific inspection requirements for B and C repairs also should be provided, as applicable.

Structural Repair Manual descriptions of generic repairs also will contain repair category considerations regarding size, zone, and proximity. Detailed information for determination of inspection requirements will be provided in separate RAG documents for each model. Repairs that were installed in accordance with a once-current SRM, but that have now been superseded by a new damage-tolerant design, will require review. Such superseded repairs may be reclassified to Category A, B, or C. Category B or C repairs would require additional inspections and/or rework.

Repair Assessment Process

There are two principal techniques that can be used to accomplish the repair assessment. The first technique involves a three-stage procedure. This technique could be well-suited for operators of small fleets. The second technique involves the incorporation of the RAG as part of an operator's routine maintenance program. This approach could be well-suited for operators of large fleets and would evaluate repairs at predetermined planned maintenance visits as part of the maintenance program.

Manufacturers and operators also may develop other techniques, which would be acceptable as long as they fulfill the objectives of this rule and are FAA approved.

The first technique generally involves the execution of the following three stages:

- *Stage 1. Data Collection.* This stage specifies what structure should be assessed for repairs and collects data for further analysis. If a repair is on a structure in an area of concern, the analysis continues; otherwise, the repair does not require classification per this program. Repair assessment guidelines for each model will provide a list of structure for which repair assessments are required. Some manufacturers have reduced this list by determining the inspection requirements for critical details. If the requirements are equal to normal maintenance checks (*e.g.,* BZI checks), those details were excluded from this list. Repair details are collected for further analysis in State 2. Repairs that do not meet the static strength requirements or are in a bad condition are immediately identified, and corrective actions must be taken before further flight.
- *Stage 2. Repair Categorization.* The repair categorization is accomplished by using the data gathered in Stage 1 to answer simple questions regarding structural characteristics. If the maintenance program is at least as rigorous as the BZI identified in the manufacturer's model specific RAG, well-designed repairs in good condition meeting size and proximity requirements are designed as Category A. Simple condition and design criteria questions are provided in Stage 2 to define the lower bounds of Category B and Category C repairs. The process continues for Category B and C repairs.
- *Stage 3. Determination of Structural Maintenance Requirements.* The supplemental inspection and/or replacement requirements for Category B and C repairs are determined in this stage. Inspection requirements for the

repair are determined by calculation or by using predetermined values provided by the manufacturer, or other values obtained using an FAA-approved method. In evaluating the first supplemental inspection, Stage 3 defines the inspection threshold in flight cycles measured from the time of repair installation. If the time of installation of the repair is unknown and the airplane has exceeded the assessment implementation times or has exceeded the time for first inspection, the first inspection should occur by the next C-check interval, or equivalent cycle limit after the repair data is gathered (Stage 1).

An operator may choose to accomplish all three stages at once, or just Stage 1. In the latter case, the operator would be required to adhere to the schedule specified in the FAA-approved model-specific RAG for completion of Stages 2 and 3.

Incorporating the maintenance requirements for Category B and C repairs into an operator's individual airplane maintenance or inspection program completes the repair assessment process for the first Technique.

The second technique involves setting up a repair maintenance program to evaluate all fuselage pressure boundary repairs at each predetermined maintenance visit to confirm that they are permanent. This technique requires the operator to choose an inspection method and interval in accordance with the FAA-approved RAG. The repairs whose inspection requirements are fulfilled by the chosen inspection method and interval would be inspected in accordance with the regular FAA-approved maintenance program. Any repair that is not permanent, or whose inspection requirements are not fulfilled by the chosen inspection method and interval, would either be: (1) Upgraded to allow utilization of the chosen inspection method and interval, or (2) individually tracked to account for the repair's unique inspection method and interval requirements. This process is then repeated at the chosen inspection interval.

Repairs added between the predetermined maintenance visits, including interim repairs installed at remote locations, would be required either to have a threshold greater than the length of the predetermined maintenance visit or to be tracked individually to account for the repair's unique inspection method and interval requirements. This would ensure the airworthiness of the structure until the next predetermined maintenance visit, at which time the repair would be evaluated as part of the repair maintenance program.

Whichever technique is used, there may be some repairs that cannot easily be upgraded to Category A due to cost, downtime, or technical reasons. Such repairs will require supplemental inspections, and each operator should make provisions for this when incorporating the RAG into its maintenance program.

Repair Assessment Implementation Time

The implementation time for the assessment of existing repairs is based on the findings of the repair surveys and fatigue damage considerations, described previously. As discussed, the repair survey findings indicated that all of repairs reviewed appeared to be in generally good structural condition. This tended to validate the manufacturer's assumptions in designing both the repair and the basic structure. Since the manufacturer had based the design stress levels on a chosen Design Service Goal (DSG), it was concluded that the repair assessment needed to be implemented sometime before a specific model reached its DSG. Based on this logic, the manufacturers and operators established an upper boundary for an assessment to be completed, and then reduced it to establish an ''implementation time,'' defined as 75% of DSG in terms of flight cycles.

Therefore, under this approach, incorporation of the RAG into an airplane's maintenance or inspection program ideally should be accomplished before an airplane accumulates 75% of its DSG. After the guidelines are incorporated into the maintenance or inspection program, operators should begin the assessment process for existing fuselage repairs within the flight cycle limit specified in the FAA-approved model-specific RAG. There are three ''deadlines'' for beginning the repair assessment process, depending on the cycle age of the airplane on the effective date of the rule.

1. Airplane cycle age equal to or less than implementation time on the rule effective date: The operator is required to incorporate the guidelines into its maintenance or inspection program by the flight cycle implementation time, or one year after the effective date of the rule, whichever occurs later. The assessment process begins (*e.g.,* accomplishment of Stage 1) on or before the flight cycle limit specified in the RAG after incorporation of the guidelines. (The flight cycle limits are expressed in flight cycle numbers, but are generally, equivalent to a D-check.)

2. Airplane cycle age greater than the implementation time but less than the DSG on the rule effective date: The operator is required to incorporate the guidelines into its maintenance or inspection program within one year of the rule effective date. The assessment process then begins (*e.g.,* accomplishment of Stage 1) on or before the flight cycle limit specified in the RAG (this flight cycle limit is generally equivalent to a D-check), not to exceed another specified flight cycle limit (computed by adding the DSG to the flight cycle limit equivalent of a C-check) after incorporation of the guidelines.

3. Airplane cycle age greater than the DSG on the rule effective date: The operator is required to incorporate the guidelines in its maintenance or inspection program within one year after the effective date of the rule. The assessment process would begin (*e.g.* accomplishment of Stage 1) on or before the flight cycle limit specified in the RAG (generally equivalent to a C-check) after incorporation of the guidelines.

In each of these three cases, the assessment process will have to be completed, the inspections conducted, and any necessary corrective action taken, all in accordance with the schedule specified in the FAA-approved RAG document.

Discussion of the Final Rule

This final rule is intended to ensure that a comprehensive assessment for damage-tolerance be completed for fuselage pressure boundary repairs, and that the resulting inspections, modifications, and corrective actions (if any) be accomplished in accordance with the model-specific RAG. To comply with this, the operator will need to consider the following:

Consideration 1

The means by which the FAA-approved RAG's are incorporated into a certificate holder's FAA-approved maintenance or inspection program is subject to approval by the certificate holder's Principal Maintenance Inspector (PMI) or other cognizant airworthiness inspector.

Consideration 2

The FAA Aircraft Certification Office (ACO) having cognizance over the type certificate of the airplane must approve the RAG.

Consideration 3

This final rule will not impose any new reporting requirements; however, normal reporting required under 14 CFR 121.703 will still apply.

Consideration 4

This final rule will not impose any new FAA recordkeeping requirements. However, as with all maintenance, the current operating regulations (*e.g.,* 14 CFR 121.380) already impose recordkeeping requirements that will apply to the actions required by this final rule. When incorporating the RAG into its approved maintenance program, each operator should address the means by which it will comply with these recordkeeping requirements. That means of compliance, along with the remainder of the program, will be subject to approval by the PMI or other cognizant airworthiness inspector.

Consideration 5

The scope of the assessment is limited to repairs on the fuselage pressure boundary (which includes fuselage skin, door skin, and pressure webs). A list of Service Bulletins that are the subject of AD's will be contained in the model-specific RAG with required post modification/repair inspection programs, as required. A list of other structural Service Bulletins will be provided in the model-specific RAG with associated inspection threshold and repeat intervals.

Consideration 6

The RAG's provided by the manufacturer do not generally apply to structure modified by a Supplemental Type Certificate (STC). However, the operator will still be responsible to provide RAG's applicable to the entire fuselage external pressure boundary that meets the program objectives specified in the advisory circular (AC) associated with this final rule (which will be available in the near future). This means that the operator should develop, submit, and gain FAA approval of guidelines to evaluate repairs to such structure.

The FAA recognizes that operators usually do not have the resources to determine a DSG or to develop RAG's, even for a very simple piece of structure. The FAA expects the STC holder to assist the operators in preparing the required documents. If the STC holder is out of business, or is otherwise unable to provide assistance, the operator will have to acquire the FAA-approved guidelines independently. To keep the airplanes in service, it is always possible for operators, individually or as a group, to hire the necessary expertise to develop and gain approval of RAG's and the associated DSG. Ultimately, the operator remains responsible for the continued safe operation of the airplane.

The cost and difficulty of developing guidelines for modified structure may be less than that for the basic airplane structure for three reasons:

First, the only modifications made by persons other than the manufacturer that are of concern in complying with this final rule are those that affect the fuselage pressure boundary. Of those that do affect this structure, many are small enough to qualify as Category A repairs under the RAG, based solely on their size.

Second, if the modified structure is identical or very similar to the manufacturer's original structure, then only a cursory investigation may be necessary. In such cases, the manufacturer's RAG may be shown to be applicable with few, if any, changes. If the operator determines that a repair to modified structure can be evaluated using the manufacturer's model-specific RAG, that determined should be documented and submitted to the operator's PMI or other cognizant airworthiness inspector for approval. For all other repairs, a separate program will need to be developed.

Third, the modification may have been made so recently that no RAG will be needed for many years. Compliance with this final rule could be shown by:

- Establishing the DSG for the new modified structure,
- Calculating an implementation time that is equal to three quarters of that DSG, and
- Then adding a statement to the operations specifications for part 121, 125 and 129 operators that the RAG will be incorporated into the maintenance or inspection program by that time. For part 91 operators, the inspection program will be revised to include the RAG.

If the modified structure is very similar to the original, then the DSG for the modified structure may also be very similar. No RAG would be needed until 75% of that goal is reached. For example, in the case of a large cargo door, such installations are often made after the airplane has reached the end of its useful life as a passenger-carrying airplane. For new structure, the clock would start on repair assessment at the time of installation. Further, since the DSG is measured in cycles, and cargo operation usually entails fewer operational cycles than passenger operations, the due date for incorporation of the RAG for that structure could be many years away.

Compliance with this final rule requires that conditions such as those described above be properly documented in each operator's FAA-approved maintenance program; however, the FAA considers that the cost of doing so should not be significant. There should be very few examples where the STC holder is unavailable, and the operators would have to bear the cost of developing a complete RAG document. Guidance on how to comply with this aspect of the rule is discussed in the soon-to-be-released AC associated with this rule.

Consideration 7

An operator's repair assessment program will have to include damage-tolerance assessments for new repairs. Repairs made in accordance with the revised version of the SRM would already have a damage-tolerance assessment performed; otherwise, the manufacturer's RAG could be used for this purpose, or operators may develop other methods as long as they achieve the same objectives.

Consideration 8

Once the airworthiness inspector having oversight responsibilities is satisfied that the operator's continued airworthiness maintenance or inspection program contains all of the elements of the FAA-approved RAG, the airworthiness inspector will approve a maintenance program or inspection program revision. This will have the effect of requiring use of the approved RAG.

In summary, based on discussions with representatives of the affected industry, recommendations from ARAC, and a review of current rules and regulations affecting repair of primary structure, the FAA recognizes the need for a repairs assessment program to be incorporated into the maintenance program for certain transport category airplanes. This final rule accomplishes that.

Discussion of Comments

The FAA received 16 comments in response to Notice 97–16. Comments included airplane manufacturers, airplane operators, non-U.S. aviation authorities, and aviation industry representatives and groups. The disposition of all comments, grouped by subject, follows.

Support for the Proposal

Several commenters support the proposed rule.

No Need for the Rule

One commenter contends that the proposed rule is largely redundant and may not even be needed. The commenter points out that, in 1978, with amendment 25–45, the FAA amendment § 25.571 to impose damage-tolerance criteria for design of aircraft structure. Airplanes certified after that

date have damage-tolerance criteria built in to the manufacturers' repair philosophies. Airplanes older than that are regulated by FAA-approved Supplemental Inspection Documents.

The commenter also points out that, in 1989 (ref. memorandum from Manager, Transport Airplane Directorate, ''Policy Regarding Impact of Modification and Repairs on the Damage-tolerance Characteristics of Transport Category Airplanes,'' dated November 27, 1989), the FAA clarified that ''* * * All transport category airplanes having the damage-tolerance requirements of § 25.571, amendment 25–45, as their certification basis and those with mandated Supplemental Inspection Documents [SID] * * * must continue to maintain their damage-tolerance characteristics when repaired or modified in any way.'' Industry has adhered to this rendering since that time.

Thus, through the certification rule for new airplanes and through the SID programs for older airplanes, the damage-tolerance assessment of repairs is already being done. For this reason, commenter does not see a need for the proposed rule and implies that it should be withdrawn.

The FAA acknowledges the commenters' observations, but does not occur that the rule is unnecessary. As discussed in the preamble to the notice (and this final rule), the airplanes certified after amendment 25–45 must be maintained in accordance with their certification basis and, therefore, a damage-tolerance analysis of all repairs is required. The 1989 memorandum was issued by the FAA to clarify that operators with airplanes subject to the mandated SID programs should continue to maintain the damage-tolerance capabilities of the airplanes when repaired or modified in any way. However, all operators of the airplanes covered by SSID's have not routinely followed this policy. This fact was made clear by the adoption of Airworthiness Directive (AD) 98–11–03 (Amdt. 39–10530; 63 FR 27455, May 19, 1998) and AD 98–11–04 (Amdt. 39–10531; 63 FR 27456, May 19, 1988) which revised the SSID programs for the Model 727 and 737, respectively. In response to the NPRM's for those AD's, numerous commenters (including the ATA) objected to proposed requirements that repairs be assessed. In part, these objections were based on the argument that operators did not have the records to identify, or the methods to assess existing repairs. The FAA, as well as the AAWG, in developing the repair assessment program, concluded that it is necessary to assess the repairs on all of the affected 11 models of (aging) aircraft to ensure that the original intent of the SID programs (and related AD's mandating them) is being followed.

Manufacturers' Commitments to Providing Documents

Two commenters suggest that adoption of the rule and implementation of the repair assessment program be delayed until the RAG documents, revised SRM's, and service bulletins are available from the manufacturers to affected operators.

One of these commenters states that the FAA should not rely on verbal commitments from the manufacturers to issue these documents sometime in the future. The commenter further states that commitments cannot be depended on, especially where manufacturers are operating with greatly reduced staffs and resources (*i.e.,* due to takeovers). The commenter suggests that, if manufacturers are unable to supply these documents in a timely manner, operators may find themselves in situations where they are not in compliance with this rule.

The other commenter points out that the manufacturer has not provided any information regarding the SRM update schedule for the affected airplanes in this commenter's fleet. The commenter states that, being unable to review the SRM beforehand, raises concerns about possible conflicts between the model-specific RAG document and the corresponding SRM. If the FAA does not delay implementation of the rule, this commenter requests that an appropriate ''grace period'' be provided after the SRM's are completely updated so that operators will have time to incorporate the new changes.

The FAA acknowledges these commenters' concerns, but does not agree that a delay is necessary. This final rule is written such that it neither requires the type certificate (TC) holder to develop the guidelines, nor depends on this issuance of any documents from the TC holder to be enforceable. As stated in the preamble to the notice and this final rule, the operator is responsible for providing the RAG applicable to the fuselage external pressure boundary of the airplanes in its fleet. If the TC holder does not or cannot provide relevant service information, the operator may develop, submit, and gain approval of its own guidelines to evaluate repairs to such structure.The information contained in the soon-to-be-released accompanying AC describes one method that may be used by any entity—operator, TC holder, or otherwise—to develop such guidelines. Additionally, it is always possible for operators, individually or as a group, to hire the necessary expertise to develop and gain approval of RAG's. Ultimately, however, the operator remains responsible for the continued safe operation of its airplanes.

Further, the FAA also does not concur with the commenter's request that implementation of the repair assessment program be postponed, or a grace period provided, until SRM's are updated to correspond with the RAG documents. The purpose of the two documents is different: the purpose of the RAG document is to assist in evaluating *existing* repairs; the purpose of the updated SRM is, as is usual, to assist in the installation of *new* repairs. Operators affected by this new rule will be required to show how new repairs installed after the effective date of the final rule will be handled. The methods described in the soon-to-be-released AC associated with this rule also may be used for this purpose.

The FAA has been advised, however, that as of the date of publication of this rule, the manufacturers have finalized the RAG's applicable to the older airplane models affected by this rule. The guidelines for the newer models are nearly complete and certainly will be finalized by the time the newer models will require the initial inspections.

Further, the FAA also has been advised that the manufacturers (1) have completed updating the pertinent parts of their Structural Repair Manuals and (2) are ready to provide necessary training programs.

Airplanes Subject to the Final Rule

Airbus Models Subject to Rule. One commenter requests that the listing of affected models of Airbus airplanes in the proposed rule be revised as follows:

- Change references to the Airbus A300 to: ''Airbus A300 (*excluding the –600 series)*; and
- Clarify paragraph (a)(3) of the proposed § 91.410, § 121.370, § 125.248; and § 129.32 to include references to the Airbus Model C4–200 and F4–200 models.

The FAA concurs with the commenter's first request to exclude the Airbus A300–600 series from the applicability of the rule, and has revised the text of the final rule accordingly. The FAA finds it is appropriate to exclude the Airbus A300–600 series from the applicability of this rule because this model been certified to regulatory standards that include the requirements for damage-tolerant structure under § 25.571, as amended by amendment 25–45. As explained earlier, such airplanes are not included in this rulemaking action. An Airworthiness Limitations Section has been approved

for the Airbus A300–600 series airplanes, and it is considered a damage-tolerant airplane. Based on the Airbus airplanes currently certificated in the U.S., the following airplanes in the Model A300–600 series would be excluded from compliance with this rule:

- A300 Model B4–600 series,
- A300 Model B4–600R series, and
- A300 Model F4–600R series.

The FAA does not concur with the commenter's second request to add references to Airbus A300 Model C4–200 and A300 Model F4–200 model airplanes to the applicability of the rule. The C4–200 and F4–200 model airplanes currently are not certified in the U.S. and, therefore, cannot be made part of the rule's applicability.

In light of this commenter's requests, the FAA finds that additional clarification is appropriate as to specify exactly which Airbus A300 airplanes are subject to the requirements of this rule.

In § 91.410, § 121.270, § 125.248, and § 129.32, the FAA delineates the Airbus A300 ''Model B2'' as a separate model, whose implementation threshold is 36,000 flights, Based on the airplanes currently certified in the U.S. specified in Type Certificate Data Sheet (TCDS) A35EU, the ''A300 Model B2'' designation referred to in the rule includes:

- Model B2–1A,
- Model B2–1C,
- Model B2K–3C, and
- Model B2–203.

If any new ''Model B2'' airplanes are certified in the U.S. in the future, those airplanes would be required to follow he implementation time of 36,000 flights above the window line and 36,000 flights below the window line, as outlined in the rule.

Readers also note that, in § 91.410, § 121.370, § 125.248, and § 129.32, the FAA delineates the Airbus A300 ''Model B4–100 (including Model B4–2C)'' as a separate model whose implementation threshold is 30,000 flights above the window line and 36,000 flights below the window line. Based on the airplanes currently certificated in the U.S. specified in TCDS A35EU, this model designation referred to in the rule includes:

- Model B4–103 and
- Model B4–2C.

If any new ''Model B4–100'' airplanes are certificated in the U.S. in the future, those airplanes would be required to follow the implementation time of 30,000 flights above the window line and 36,000 flights below the window line, as outlined in the rule.

Further, in § 91.410, § 121.370, § 125.248, and § 129.32 and FAA, delineates the Airbus A300 ''Model B4–200.'' as a separate model whose implementation threshold is 25,000 flights above the window line and 34,000 flights below the window line. Based on the airplanes currently cerfificated in the U.S. specified in TCDS A35EU, this model designation referred to in the rule is the Model B4–203.

If any new ''Model B–200'' airplanes are certificated in the U.S. in the future, those airplanes would be required to follow the implementation time of 25,500 flights above the window line and 34,000 flights below the window line, as outlined in the rule.

Fokker Models Subject to Rule. One commenter states that the AAWG recommended that only the Fokker F28 Mark 1000 through 4000 airplanes were to be affected by this action. The commenter requests that proposed paragraph (1) of the affected regulations be revised to specify this. The proposal includes reference to the Mark 1000C and 3000C models, which is incorrect.

The FAA concurs. The Mark 1000C and 3000C were inadvertently added to the applicability of the proposed rule. References to those models have been deleted from the final rule.

Boeing Models Subject to Rule. Another commenter requests clarification as to whether the Boeing Model 737–300 is affected by the proposed rule. The commenter notes that the Boeing 737 Repair Assessment Guidelines appear to address only the –100 and –200 models, whereas the proposed rule appears to include the –300.

The FAA points out that the Boeing 737–300 is included in the applicability of the rule, as are *all* models of the Boeing 737. The manufacturers usually produce documents for the older airplanes first before they produce documents for the newer model airplanes Boeing has advised the FAA that it will produce RAG's for all the models of the Boeing 737. Boeing is expected to produce the documents based on how soon the fleet leaders for a specific model will reach the mandated implementation time. The operators should maintain close contact with the manufacturers to obtain a schedule of when the model-specific RAG's will be produced.

General Applicability of the Rule. Another commenter notes that the proposed rule did not mention the ''later design'' airplanes, that is, airplanes that are certified to § 25.571, amendment 25–45, or later. The commenter requests clarification as to whether these airplanes would be affected by the proposed rule.

The FAA concurs with the commenter's observation that the proposal did not mention the term ''later design [airplanes].'' The FAA infers that the commenter uses this term to refer to airplanes certificated after the time that amendment 25–45 became effective. As explained previously, damage-tolerance requirements were introduced into the airplane design in post-amendment 25–45 airplanes, and the certificate holder is required by the amendment to return repaired airplane structure to the original certification basis by installing only those repairs that meet the airplane's damage-tolerance certification basis. In light of the fact that damage-tolerance is ''designed into'' the post-amendment 25–45 airplanes, the FAA considers it unnecessary to include those airplanes in this rule. This final rule, therefore, applies to those airplanes whose certification basis was approved before amendment 25–45 became effective, and were not designed with requirements for damage-tolerant structure. [The FAA points out, however, that the AAWG did recommend continued monitoring of repairs on the newer (''later design'') airplanes, and additional rulemaking if conditions warrant.]

Areas of Inspection

One commenter requests that the FAA clarify the proposed rule to indicate that the area of inspection termed the ''fuselage pressure boundary'' includes not only the fuselage skin and bulkhead web, but the door skin as well.

The FAA concurs. The intent of the repair assessment is to include the entire fuselage pressure boundary, which does include, among other things, the fuselage, bulkhead webs, and the door skin. (The preamble to the proposal, in fact, did refer to assessment of modified structure relevant to large cargo doors.) The rule has been revised for clarity as suggested by the commenter.

Effective Date of the Rule

One commenter requests that the effective date of the final rule be changed to at least one year after each of the model-specific RAG documents is officially approved and published. The commenter further requests that an additional grace period be added to allow operators the time for preparation work before starting a new complicated program like the repair assessment program and time to train their personnel. The commenter states that

none of the model-specific RAG's developed by manufacturers have been officially approved yet by the FAA, and it is difficult for the operators to review and prepare for implementing the program without the actual guideline materials in hand. To justify this request, the commenter points out that the FAA previously provided similar extended compliance times for incorporating other complex programs such as the CPCP and the SSID programs.

The FAA does not concur that a revision to the effective date of the final rule is appropriate. As it is written, the rule does allow a ''grace period'' of one year after the effective date for operators to implement the program. (This is similar to the provisions of the CPCP and SSID programs.) The FAA also points out that operators and airlines have had the opportunity to work with the manufacturers in the development of the guidelines over the past 6 years. The FAA already has reviewed the RAG documents for 9 of the 11 models affected by the rule and has found that they would satisfy the intent of the rule, the FAA will approve these RAG documents when the rule becomes effective. However, even if these documents are not approved, the rule places the onus on the *operators* to have guidelines and a program in place. The airframe manufacturers are providing the RAG documents as a ''service'' to their customers. However, if the manufacturer does not have a RAG document available, the operator would still be required to develop repair assessment guidelines. Therefore, trying the compliance time of the rule in any way with the date of publication of the manufacturers' documents is immaterial.

Another commenter requests that the proposed implementation time be increased from 1 year to 18 months to allow manufacturers adequate time ''to respond to the new rule.'' The commenter is concerned that the proposed rule will be implemented sooner than the manufacturers can support the operators with inspection thresholds and repeat inspection intervals for multiple repair configurations, Service Bulletin repairs, and SRM repairs.

The FAA does not concur that additional calendar time for implementation is appropriate. The FAA has reached this conclusion for several reasons:

First, the original notice of this rulemaking provided a 3-month period for public comments. The FAA later reopened the comment period for an additional 3 months to allow the manufacturers time to distribute copies of the RAG's and allow the operators time to review those documents and provide comments.

Second, industry has been aware of the need to assess the damage-tolerance of repairs since at least 1978, when amendment 25–45 was issued to impose damage-tolerance criteria for design of aircraft structure. Airplanes certificated after 1978 have damage-tolerance criteria built in to the manufacturers' repair philosophies. Airplanes certificated before that date are regulated by FAA-approved Supplemental Inspection Documents. The FAA then clarified for the industry in 1989 that all transport category airplanes having the damage-tolerance requirements of § 25.571, amendment 25–45, as their certification basis (*i.e.,* post-1978 certificated airplanes) and those with mandated Supplemental Inspection Document programs *(i.e.,* pre-1978 certificated airplanes) must continue to maintain their damage-tolerance characteristics when repaired or modified in any way. Industry has been aware of this policy since that time. Thus, the damage-tolerance assessment of repairs is already being done; it is not a new concept. The RAG's have been under development for many years and, during that development, the manufacturers of the affected airplanes have consulted with operators.

Similarly, another commenter requests that additional time be provided before implementation of the assessment program so that regulated aviation community can review, understand, comment on, and assimilate the RAG documents. The commenter claims that ''FAA's aggressive schedule on the instant rulemaking has resulted in placing a lot of pressure on the airframe manufacturers to publish the RAG documents as soon as possible.'' The commenter asserts that, because of this, the documents are of poor quality, with obvious gaps and numerous inconsistencies between them. The commenter maintains that there is a ''compelling need'' to have these documents reviewed for completion and for inconsistencies within and among them prior to starting the clock for compliance.

The FAA does not concur. Numerous operators have participated in the development of this rule, and have worked closely with the manufacturers in the development of the RAG's. During various working group meetings, the FAA raised the issue of inconsistencies between documents; however, the operators represented at the meetings did not raise any concerns about this. The FAA does not agree that granting more time before implementing this rule will result in the timely resolution of inconsistencies; as long as the repair assessment guidelines meet the intent of the rule, the guidelines are not required to be identical.

Implementation Times

One commenter requests clarification concerning the implementation times of the repair assessment for new repairs. The commenter questions what implementation period would apply for new repairs, assuming that an airplane already has surpassed the flight cycle implementation time specified for that model, and assuming that the operator has already assessed every applicable repair under the proposed rule.

The FAA clarifies this issue by noting that the operator is required to incorporate an FAA-approved repair assessment program into its maintenance or inspection program, and that this program must include a provision for addressing new repairs. As stated in the final rule, for airplanes that have already exceeded the specified implementation time, the maintenance program must be revised to incorporate the repair assessment program within a year after the effective date of this final rule. Once the program is revised, operators are required to comply with it thereafter, under normal maintenance rules. Therefore, there is no separate ''implementation time'' for new repairs.

Another commenter requests clarification on the definitions of various phases of the repair assessment program described in the Boeing Model 727 RAG document, D6–56167. Since this commenter's questions are not specifically relevant to this final rulemaking action, they are not included in this preamble. However, the FAA has responded directly to the commenter and a copy of the detailed response is contained in the docket.

Determination of Inspection Intervals

One commenter questions why the proposed rule holds airplanes with mechanical fuselage joints to the same inspection intervals as those whose fuselage joints are assembled with adhesives. The commenter implies that the inspection intervals should be different for each type of these airplanes.

The FAA does not concur. The final rule does not specify any explicit interval for repetitive inspections. Those intervals will be developed based on what is determined to be appropriate for the particular design features of the airplane. These intervals will be specified in the model-specific RAG

documents and will be subject to approval by the cognizant FAA Aircraft Certification Office. The only aspect that all airplanes will be held to is that the inspection intervals must ensure that damage is detected and corrected before failure of a structural repair could occur.

Another commenter requests that the FAA issue a determination in advance stating that the results of SID inspections could serve as an alternative means of compliance with the proposed rule. The commenter asserts that it is unclear how to address an apparent conflict where damage-tolerance analysis done under a SID program, which is mandated by an AD, might render a different inspection schedule from the guidelines in the RAG document.

The FAA does not concur with the commenter's request. The FAA understands that the commenter's concern arises from a scenario such as the following:

- A repair to a principal structural element (PSE) has been accomplished previously.
- The operator has an inspection schedule, as part of its SID program, for the repaired PSE based on damage-tolerance analyses.
- While assessing the repair of a PSE in accordance with the new RAG document, the operator finds that the inspection schedule under the RAG is more conservative than the SID (*i.e.,* shorter inspection intervals, more frequent inspections).

The FAA does not consider it either necessary or appropriate to issue ''an advance determination'' that SID inspection results could serve as an alternative method of compliance to the rule for, in fact, they may not. As stated in the preamble to the notice and this final rule, there is the potential that there will be some situations where requirements of the RAG do not agree with those of an AD (especially if the AD were written to address a modification to the airplane made by someone other that the original manufacturer). In those cases, the Federal Aviation Regulations would require that compliance be shown with *both* the AD and this rule. Such a ''dual compliance'' situation can be avoided in the long term by working with the manufacturer, if that is the source of difficulty, or by securing approval of an alternative method of compliance with the AD. In the short term, however, accomplishment of the earlier threshold, the shorter repeat inspection interval, or the more stringent rework/replacement schedule would always constitute compliance with the less stringent requirement. Thus, the operator would not be faced with an unresolvable conflict.

Escalation of Inspection Intervals

One commenter, an airframe manufacturer, requests that the proposed rule be revised to allow a ''less restrictive policy'' with regard to escalating the repetitive inspection intervals required by the program. This commenter notes that, in approving the RAG documents developed for affected airplanes, the FAA stated that it would approve provisions allowing for escalation of repeat inspection intervals for an individual airplane, but on the condition that each escalation is first approved by the FAA airworthiness inspector on a case-by-case basis. In approving these documents, the FAA indicated that it would not allow (1) any escalation of the inspection threshold or (2) a generally applicable escalation of repetitive inspection intervals.

The commenter maintains that the requirement of gaining prior approval by the FAA airworthiness inspector on a case-by-case basis is more restrictive than similar requirements currently required by other FAA-approved programs, such as the SSID and the CPCP. The SSID program, for example, allows the repeat inspection interval for individual airplanes to be increased by up to 10% of the normal interval. Additionally, the CPCP program allows the repeat inspection interval to be increased by up to 10% (but not to exceed 6 months) in order to accommodate unanticipated scheduling requirements; the operator needs only to notify the cognizant FAA Principal Inspector (PI) in writing of any extension made. This commenter suggests that the approach taken by these programs appears to be a more reasonable method of addressing the escalation of inspection intervals, and asserts that the inspection intervals found in the RAG's all could be increased by 10% and still provide adequate inspections to maintain safety. The commenter requests that the proposed rule be revised to allow the same escalation policy provided in for the SSID and CPCP programs be applied to the repair assessment program.

The FAA does not concur with the commenter's request. This position is based on experience that the FAA has gained over the years in trying to administer the SSID and CPCP programs. In trying to allow for some flexibility in those programs to accommodate scheduling and other situations, the FAA has found that some affected operators are very confused about the process for escalating the repeat inspection intervals; the FAA also has found that some affected operators abuse the process. The operators themselves pointed this out in the numerous meetings that were held during the development of the repair assessment program. In September 1997, the Manager of the Transport Airplane Directorate issued a memorandum to all cognizant ACO's providing guidance for development of the RAG's. That memorandum addressed areas of concern regarding inspection intervals and established two policies:

- Inspection thresholds shall be fixed and there should be no provisions for escalation of them; and
- Repeat intervals can be escalated up to either 10% or a specific time interval specified by the manufacturer, whichever is less. Escalation must be approved by the airworthiness inspector on a case-by-case basis to accommodate one-time scheduling conflicts.

One of the purposes of the memorandum was to ensure standardization of the application of the program across FAA offices. Further, because many operators have various airplane models and multiple TC holders are involved, there was a great desire on the part of the operators to have the repair assessment program standardized as much as possible and be less confusing. As stated previously, operators have been involved in many meetings with the FAA and TC holders as the RAG's were being developed; therefore, they are aware of the policy regarding escalation and have indicated their agreement with that policy.

New Repairs

One commenter's understanding of the proposed rule is that it would allow the use of the RAG document as a tool to evaluate new repairs. The commenter does not believe, however, that this is in line with the intent of the repair assessment program, which is to serve as a ''catch-up'' process to ''remedy'' old repairs and not as a design tool for new repairs. If it is possible to use the RAG to assess *new* repairs, the commenter foresees a situation where it could be possible to install repairs with a bad damage-tolerance capability and, through the RAG document, to demonstrate that the repair is still ''safe'' during a certain period. The commenter maintains that, if the proposed rule were to be revised to require that the general guidelines for designing repairs—as defined in the SRM—are followed for the new repair installed, then the situation described will certainly not occur. The commenter requests that the proposed rule state that the damage-tolerance assessment of a ''new repair'' will have to be done through the current recommendations found in the relevant part of the SRM,

or the repair assessment will have to be done by a design office (TC holder or other) and approved by the FAA following current procedures.

This commenter justifies this request by stating that all the repairs installed on the pressurized shell boundary will have to be assessed for their damage-tolerance characteristics. The commenter states that, in order to avoid design and installation of ''Category C'' repairs (temporary repairs that will need to be reworked or replaced prior to an established time limit), operators will need to use the repair instructions and methods described in the updated SRM guidelines. The commenter maintains that this will compel the manufacturer to update its SRM and not to rely only on the RAG document to fulfill its obligations to the operators under this final rule. If the SRM is used in lieu of the RAG, the approach will be preventive instead of curative and this will, in a certain manner, increase the level of safety.

The FAA recognizes the commenter's point, but does not concur that a revision to the rule is necessary. Existing regulations [*e.g.,* 14 CFR 43.13(b)] already require that all repairs restore the airplane to at least its original or properly altered condition, and those requirements are not affected by this final rule. As discussed previously, this rule simply ensures that the durability of repairs is assessed, and that necessary inspections and rework are accomplished in a timely manner. The TC holders have been devoting resources to update their SRM's, but this process has not proceeded as quickly as hoped; therefore, as an interim measure, the operators can use the RAG document to evaluate their repairs. The FAA considers that use of the RAG document to evaluate temporary repairs will not compromise the repair assessment program required by this final rule.

Classification of Major/Minor Repairs

One commenter questions whether any levels of rework or repairs resulting from the inspections that would be required under the proposed rule would be classified as ''major repairs.'' The commenter suggests that this item be clarified.

The FAA responds by noting that there should be no change regarding the classification of either ''major'' or ''minor'' repairs based on the requirements of the new rule. Generally, repairs to PSE's meet the definition of ''major'' repairs.

Supplemental Type Certificate Holders

One commenter raises a concern about Supplemental Type Certificate (STC) holders and any commitment that they would owe to operators in developing the repair assessment program. Under the proposed rule, an STC holder could quite easily withhold assistance and the operator would have to acquire an FAA-approved RAG independently. The commenter requests that the rule be revised to require the TC holder to assist the operator in assessing whether a repair to an STC modification can be evaluated through the use of the manufacturer's RAG, based on similarity. The TC holder's assistance should be required to gain approval from the operator's Principal Maintenance Inspector (PMI) or other cognizant airworthiness inspector. If the rule is not changed and the support of the STC holder is not required, significant additional costs could be incurred by the operators.

The FAA does not concur with the commenter's request that the TC holders be required to assist the operators in assessing repairs to STC modifications. Under this rule—and operating rules in general—the operator is ultimately responsible for maintenance of its fleet. As discussed in the NPRM, the operator is required to establish a program to assess repairs to modified structure, and may be compelled to contract for the necessary expertise to develop that program.

Relationship of Rule to Operation Specifications

One commenter states that, in a number of places in the preamble to the notice, the phrase, ''an operator's operation specification or maintenance program'' is used correctly, while in other places only the term ''operation specification'' is used, which is incorrect. Small operators can be expected to have their maintenance programs incorporated into Section D of the airplane's operation specifications. However, large operators, especially those permitted reliability-based maintenance programs, have only a chapter of their Maintenance Manual *listed* in Section D of the operation specifications. The commenter requests that the proposed rule be revised to clarify this.

The FAA concurs. The FAA has removed the term ''operation specification'' and replaced it with ''maintenance program'' in the appropriate areas of the text of the final rule.

Adjustment for Pressure Factor

One commenter expresses concern that the 1.2 adjustment factor for the Boeing 747SR touch and go allowance, and the allowance for flights with less than 2.0 PSI, were removed from the Boeing 747 RAG document. The commenter requests that the rule specifically permit the use of these pressure factor allowances in the RAG document.

The FAA does not concur. The FAA is concerned about tracking individual airplanes and their usage in order to comply with such an allowance. If the operator submitted a plan on how the airplanes would be tracked and how this information would be transferred in the event the transfer of such an aircraft, the FAA would consider a proposal that could be approved on a case-by-case basis.

Recordkeeping

Several commenters raised concerns about recordkeeping that could necessarily accompany the implementation of the requirements of the proposed rule. In the preamble to the notice, the FAA indicated that the rule would not impose any new FAA recordkeeping requirements, and that the current operating regulations (*e.g.,* 14 CFR 121.380, ''Maintenance recording requirements'') already impose adequate recordkeeping requirements that would apply to the actions required by the rule. As discussed below, certain commenters contest that statement:

Transfer of Repair Data. One commenter states that § 121.380 is not an adequate regulation either to mandate the transfer of repair data from one owner to another, or to ensure the transfer of inspection data resulting from the new regulation. The commenter points out that § 121.380 requires that data be retained for only certain periods of time (usually one year), not the lifetime of the airplane. This poses a problem if operators are required to be knowledgeable of all the repairs previously performed on every airplane in its fleet. The commenter asserts that the proposed rule fails to take into consideration that ''over half of the commercial airplanes in the U.S. are leased and, therefore, subject to transfer between two U.S. operators.'' Those involved in such transfers today are well aware that the ability to obtain repair data is dependent on the individual recordkeeping standards of the operators—how long or how well the operator has kept the data. Moreover, the current regulations do not assist in the acquisition of such data.

The commenter suggests that § 121.380 should be revised to require the retention of records for the lifetime of the aircraft or to exempt repair data from the current ''one-year destruction'' rule.

The FAA acknowledges the commenter's observations, but does not agree that there is a need either to impose new recordkeeping requirements in conjunction with this rulemaking, or to revise § 121.380. In every case, when an operator purchases an aircraft, it is the operator's responsibility to ensure that the aircraft complies with the operational requirements prior to adding it to its certificate. If pertinent data are not available at the time of the purchase, it normally is the operator's responsibility to go about obtaining the necessary information. In the case of this final rule, if the repair data are not available, an operator may be required to perform an assessment of the aircraft to establish the damage-tolerance of the repairs to the fuselage pressure boundary. The operator could then retain records of this assessment. Generally, the FAA anticipates that availability of necessary repair records will significantly enhance the value of affected airplanes because of the degree to which such records will simplify airplane transfers. Therefore, it is likely that, as a matter of commercial practice, operators will retain those records indefinitely.

Information Actually Retained. One commenter states that, while most U.S. operators agree that records covering ''unsuperseded'' routine maintenance functions must be maintained, they do not all agree that ''non-routine functions resulting from these inspections are equally important.'' In short, a record that documents the performance of a repair assessment inspection may be kept, but any rework, repairs, etc., resulting from that inspection may not. This is especially true in cases where operators have totally automated their record systems. The commenter suggests that the proposed rule, in actuality, will impose new recordkeeping requirements since operators will have to maintain repair data resulting from inspections.

The FAA acknowledges the commenter's comments. However, the FAA reiterates that, as stated previously, there are no new recordkeeping requirements mandated by this rule. As in any case, operators are required to maintain satisfactory evidence that they are in compliance with the regulations; this new rule requires nothing in addition to this.

New Methods To Retain/Maintain Repair Data

One commenter states that it has developed an inexpensive software program and has a ''U.S. Patented Process'' to track new and old repairs completed on aircraft by using digital cameras. The commenter suggests that this product would be an excellent way of tracking aircraft repairs for the proposed repair assessment program.

The FAA infers from this comment that the commenter is suggesting the rule be revised to require the use of such software to maintain repair data. The FAA understands that this software and others like it currently are available on the market. Operators could certainly use these types of products to simplify the retention of the necessary information needed to demonstrate compliance with this rule. However, no change to the rule is necessary to indicate this.

Enforceability of § 129.32

One commenter questions the enforceability of the proposed § 129.32 on operators that are not subject to FAA regulations, specifically non-U.S. operators. The commenter states that, for example, although maintenance program provisions specified in part 129 may be issued by the FAA and provided by the airplane lessor (in the U.S.) to an international lessee, there is ''no way to enforce [the lessee's] adherence'' to the requirements of that regulation. The commenter asserts that ''there are no recordkeeping enforcement provisions for part 129 operators'' and, since ''they do not operate to 14 CFR, the proposed rule would be meaningless to them.'' The commenter fears that this could result in the invalidation of the leased airplane's Standard Airworthiness Certificate when it is returned to the U.S.

The FAA does not concur. The rule will be enforceable with regard to part 129 foreign air carriers operating U.S.-registered aircraft into the U.S. As discussed in the preamble to the notice, the new repair assessment program required by § 129.32 will be approved as part of the foreign air carrier's operations specifications (the maintenance programs will be incorporated into or listed in Section D of the operation specifications). In accordance with § 129.11, part 129 foreign air carriers must conduct their operations in accordance with the operations specifications.

If foreign persons operating U.S.-registered aircraft in common carriage or foreign air carriers operating outside the U.S. do not maintain the aircraft in accordance with U.S. airworthiness standards, or cannot present adequate documentation of such maintenance, then the airworthiness certificate will be invalidated. A prudent aircraft owner will insist, as a matter of contract, that the repairs and maintenance are adequately documented so that, when the lease is terminated or the airplane sold, the airplane can retain its airworthiness certificate.

Impact on International Trade

One commenter raises three issues concerning the International Trade Impact Assessment that appeared in the preamble to the notice, and the intended effect of the proposed rule on the import and export of airplanes:

First, the commenter questions whether the International Trade Impact Assessment took into account the fact that other nations could emulate this rulemaking action and establish their own similar repair assessment programs. Usually foreign operators maintain considerably better records for such things as repairs than do U.S. operators and if the proposed rule does not require ''any new recordkeeping requirements,'' U.S. operators may be hard-pressed to provide adequate data to support the other country's repair assessment program. The commenter implies that this may be a hindrance to the export of airplanes to those countries.

Second, the commenter asks that, if an imported airplane has never been inspected under a repair assessment program, (1) would its baseline inspection suffice, or (2) does the FAA/AAWG assume that the airplane's next U.S. part 121 operator would be responsible for bringing it up to the standards of the proposed rule prior to operation? The commenter notes that there is no FAA checklist of items that require action prior to issuance of a Standard Airworthiness Certificate, but an airplane being imported must meet the requirements of parts 21, 43, and 91 to obtain a Standard Airworthiness Certificate. The commenter states that the proposed change to § 91.410 would establish deadlines that would preclude the issuance of the certificate prior to an airplane being added to a part 121 operator's fleet.

Third, the commenter considers that the AAWG did not possess the necessary expertise that would come from experience in the transfer of airplanes, to reach the conclusion that the proposed rule would not affect the import or export of airplanes to or from the U.S. The commenter implies that the International Trade Impact Assessment

statement that appeared in the preamble to the notice is incorrect.

The FAA does not concur with the commenter. The information provided in the International Trade Impact Assessment states only that the proposed rule would not constitute a ''*barrier* to international trade, including the export of American airplanes to foreign countries and the import of foreign airplanes into the United States.'' Despite the condition that an airplane is in when imported to the U.S., a part 121 operator will still be responsible for ensuring compliance with the repair assessment requirements—as well as with every other applicable regulation—prior to putting the airplane into operation. While this may entail additional work on the part of the operator, it does not constitute a ''barrier to international trade.'' In fact, it is general practice for the importing operator to ensure the airplane is compliance with all applicable regulations of the importing country.

Regarding the effect on exports, as indicated previously, the FAA anticipates that, as a commercial practice, operators will retain repair assessment records to facilitate future transfers. Assuming that foreign civil aviation authorities adopt requirements similar to this final rule, these records would also be sufficient to meet those requirements.

As for the qualifications of the AAWG, the FAA points out that the AAWG is comprised of representatives from the aviation industry both in the U.S. and foreign countries; this includes manfuacturers, airlines, leasing companies, industry associations, unions, and non-U.S. civil aviation authorities. These representatives are some of the most experienced individuals in aviation worldwide who possess far-reaching expertise in numerous relevant areas. Their qualifications are incomparable and, as demonstrated in their work at part of AAWG, their knowledge and capabilities are considerable.

Proposed Regulatory Evaluation

One commenter states that the proposal grossly underestimates the cost impact it will have on operators. The commenter states that one operator, who manages a fleet of about 10 percent of the affected U.S. fleet, has assessed the potential impact of the proposed program on its staffing requirements as follows:

- If only 12 repairs per airplane require assessment under the program, the total number of repairs for a fleet of 356 airplanes will be 4,272.
- Approximately 4 engineering hours (at $55 per hour) would be required for each initial assessment. Based on this figure, the total number of work hours could be as many as 17,088, costing over $900,000.
- If half the number of repairs would require evaluation beyond the scope of existing manufacturers' documents, engineering support would be twice the level of the ordinary initial assessment and, thus, an additional cost of $900,000 could be expected.
- Repetitive inspections resulting from the program will add another $2.3 million in costs and over 10,000 hours of out-of-service time.

The total estimated cost for this single operator is at least $4.1 million, and the loss of service of three airplanes out of the fleet for the remainder of their operational lives. If the airlines elects to replace the lost capacity, additional costs on the order of $300 million will be incurred. While one carrier may elect not to replace lost capacity and allow the lost traffic to go to competitors, the industry as a whole cannot take this strategy. If all operators opted not to add capacity, load factors would have to grow. At over 70%, load factors are already at an all-time high, and production is at its limits. As a result, there would be a severe degradation in service to the public, as more travelers would be forced into second and third choices involving indirect routing and higher fares. The implied total U.S. cost would then be at least $40 million, and potentially as much as $3 billion more to replace lost capacity.

The commenter avers that cost analysis indicated by FAA fails to recognize that the extensive repair analyses and additional repetitive inspections on airplanes will force many airplanes to be pulled out of normal rotations to complete the required work; the resulting out-of-service time will wreak havoc on airline schedules. The commenter points out that the potential impact on system capacity has not been addressed by the FAA and should be adequately treated prior to adopting the proposed rule. Moreover, the commenter states that the FAA does not address the potential redundancy of the requirements with regard to existing Supplemental Structural Inspection Program and airworthiness directives that also result in damage-tolerance evaluation of structural repairs. The commenter requests that the FAA initiate and complete a more formal cost-benefit evaluation of the proposed action, and make it available to the public for review and comment, prior to taking final action.

The FAA does not concur with the commenter's conclusions concerning the economic impact of this rule, or the need to provide additional time for public comment on the cost-benefit evaluation. A summary of the final economic evaluation appears in the Regulatory Evaluation Summary section of this document. The summary provides details of the FAA's final determination as to the economic impact and cost-benefit of this final rule. The full final economic evaluation can be found in the public docket. The FAA's response to specific points brought up by the commenter in its arguments is as follows.

The commenter used the figure of 4 engineering hours as the number of hours necessary to carry out each initial assessment. According to the commenter, this figure was based on one operator's estimate. The FAA used a figure of 1 engineering hour for an initial assessment; this figure was based on estimates provided by members of the AAWG group associated with this rule, who had arrived at the figure from the input from several operators and others in pertinent aviation fields. The FAA considers the 1 hour figure more feasible due to the fact it represents data obtained from a wider range of entities affected by this rule.

The commenter estimated that repetitive inspections would add another $2.3 million in costs and over 10,000 hours of out-of-service time. The FAA does not consider those figures to be appropriate. With regard to the $2.3 million, the commenter made no mention of using discounted values; therefore, the FAA assumes that the $2.3 million figure is represented in current values/prices. However, the inspections are to take place in the future—and they would need to be discounted to present values. This would substantially reduce their magnitude in present value.

With regard to the 10,000 hours of out-of-service time, the commenter made no mention of accomplishing the inspections required by the rule during a regularly-scheduled C- or D-check. The use of the C- and D-check. The use of the C- and D-checks to carry out inspections would significantly reduce or effectively eliminate the out-of-service time.

In its proposed economic evaluation, the FAA carried out cost estimates for operators by using 1 hour for the accomplishment of the initial assessments, and 2 hours for carrying out supplemental inspections. The assessments and inspections also were assumed to take place during C- or D-checks. The cost estimates thus derived were subsequently discounted to present day values—since the assessments and inspections would not

take place today but at some years in the future.

The commenter considers the rule to be largely redundant and not needed because the current certification regulations for new airplanes, and the Supplemental Structural Inspection Programs (SSIP) for older airplanes, already accomplish the intent of a damage-tolerance assessment of repairs that would be required by the rule. The FAA does not concur with the commenter's assumption and has explained, in both the preamble to the notice as well as this preamble, the reasons why this rule is essential. To reiterate: The Supplemental Structural Inspection Programs for existing airplanes, including nearly all of the airplane models affected by this new rule, were mandated by Airworthiness Directives (AD) beginning in 1984. The majority of those AD's did not attempt to address issues relating to the damage tolerance of repairs that had been made to the airplanes; therefore, one of the objectives of this new rule is to provide that same level of assurance for areas of the structure that have been repaired.

The practice of damage-tolerance methodology has evolved gradually over the last 20-plus years. Because a regulatory requirement for damage-tolerance was not applied to airplane designs type certificated before 1978, the damage-tolerance characteristics of repairs that currently exist on airplanes may vary widely and are largely unknown. Further, some repair designs contained in the airplane manufacturers' Structural Repair Manuals (SRM) were not designed to current standards, and repairs accomplished in accordance with those SRM's may require additional inspections if evaluated using current methodologies. This new rule will ensure that those inspections are accomplishments and that repairs are brought up to standards, if necessary.

Terminology Changes in Final Rule

The FAA has revised certain terminology that appeared in the proposed introductory text of § 91.410 and § 125.248.The provisions of those sections, as they appeared in the proposal, included the phrase ''No *certificate holder* may operate * * *'' However, in this final rule, that phrase has been replaced with ''No *person* may operate * * *'' in order to conform with the terminology used throughout parts 91 and 125.

Additionally, the FAA has replaced this same terminology in the next of § 129.32 with ''No *foreign air carrier or foreign persons a U.S.-registered airplane* may operate * * *'' This change has been made in order to correctly reflect the operators who are affected by this section of the regulations.

The FAA also has revised certain other wording in the introductory text of §§ 121.370, 125.248, and 129.32. The proposed text in each of those sections stated that none of the affected airplanes could be operated beyond the specified time(s) ''* * * unless *its operation specifications have been revised* to reference repair assessment guidelines * * *'' This text in the final rule has been revised to state ''* * * unless *operations specifications have been issued* to reference repair assessment guidelines * * *'' This change is necessary to corrently reflect the interface of this rule with the operations specifications process.

Additionally, in the proposal, the introductory text for each of the proposed regulations indicated that approval of the repair assessment guidelines could be granted only by the FAA Aircraft Certification Office (ACO) having cognizance over the type certificate for the affected airplane. The FAA has revised this text in the final rule to indicate that there are FAA offices other than ACO's that have cognizance over type certificates and, therefore, those office may approve the repair assessment guidelines.

Paperwork Reduction Act

In accordance with the Paperwork Reduction Act of 1995 [44 U.S.C. 3507(d)], the FAA has determined that there are no requirements for information collection associated with this final rule.

International Compatibility

In keeping with U.S. obligations under the Convention on International Civil Aviation, it is FAA policy to comply with International Civil Aviation Organization (ICAO) Standards and Recommended Practices to the maximum extent practicable. The FAA determined that there are no ICAO Standards and Recommended Practices that correspond to these regulations.

Regulatory Evaluation Summary

Changes to Federal regulations must undergo several economic analyses. First, Executive Order 12866 directs that each Federal agency shall propose or adopt a regulation only upon a reasoned determination that the benefits of the intended regulation justify its costs. Second, the Regulatory Flexibility Act of 1980 requires agencies to analyze the economic impact of regulatory changes on small entities. Third, the Office of Management and Budget (OMB) directs agencies to assess the effect of regulatory changes on international trade. And fourth, the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4) requires agencies to prepare a written assessment of the costs, benefits, and other effects of proposed or final rules that include a Federal mandate likely to result in the expenditure by State, local, or tribal governments, in the aggregate, or by private sector, or $100 million or more annually (adjusted for inflation).

In conducting these analyzes, the FAA has determined that this rule is not ''a significant regulatory action'' as defined under section 3(f) of Executive Order 12866 and, therefore is not subject to review by the Office of Management and Budget. The rule is not considered significant under the regulatory policies and procedures of the Department of Transportation (44 FR 11034, February 26, 1979). This rule will not have a significant impact on a substantial number of small entities and will not constitute a barrier to international trade.

These analyses, available in the docket, are summarized below.

Costs to Manufacturers

This section presents the FAA's estimate of costs to the four manufacturers of the airplane models affected by the rule. The FAA has conservatively included estimates of costs to non-U.S. manufacturers (*i.e.,* Airbus Industrie, British Aerospace, and Fokker Aircraft B.V.), although only those costs to U.S. manufacturers are required to be estimated. Manufacturers will incur one-time, ''set-up'' costs to:

1. Revise their SRM and to develop RAG's to reflect damage-tolerant repair considerations:
2. Publish the revised SRM and the RAG's; and
3. Train their engineers, personnel of the operator, and the FAA to conduct repair assessments.

Manufacturers also will incur continuing program maintenance costs of:

- Maintenance of records for the program,
- Additional training and subsequent revisions to the SRM, and
- Assessments of unusual repairs that are not described in the published guidelines.

The total one-time, set-up costs are estimated to be $10.8 million in the year 2000. Total annual, recurring costs for the years 2001 through 2022 are estimated to be $28.7 million, or about $1.3 million per year. The total non-discounted costs of the rule to affected manufacturers are estimated to be $39.5 million over the years 2000 through

2022, or $25.2 million discounted to present value at 7 percent.

The estimates are based on an effective date of 2000. The FAA assumes that the manufacturers' costs of setting up their repair assessment programs would be incurred in the year 2000, and that annual costs would be incurred each year beginning in 2001 through 2022. The setting-up costs include the cost of revising Structural Repair Manuals and developing repair assessment guidelines for some models, the cost of publishing these documents, and the cost of training. Costs are expressed in constant dollars.

Costs to Operators

Operators will incur costs to

- Train inspectors,
- Integrate the repair assessment program into the maintenance program for each affected model,
- Conduct repair assessments and supplemental inspections, and
- Maintain records of assessments and inspections.

Because repair assessments and supplemental inspections are assumed to be conducted during regularly scheduled C- and D-checks, the FAA has not attributed any downtime costs. The FAA estimates that it takes between 25 and 30 people, working three shifts per day, 10 to 14 days to conduct a C-check. The FAA also estimates that it takes between 30 and 40 people, working three shifts per day, three to seven weeks to conduct a D-check. The relatively brief time to conduct a repair assessment or a supplemental inspection check could be incorporated into a C- or D-check without additional loss of service.

• Fleet Data and Noise Restrictions: The FAA used Airclaims fleet data to estimate operators' costs to conduct repair assessments and inspections. Airplane-specific cumulative and current annual flight cycles and flight hours for all U.S.-registered airplanes affected by the program were used to predict each airplane's ''threshold'' date (*i.e.,* the date on which the proposed flight cycle implementation time is reached). The analysis includes affected U.S.-registered airplanes that are operated by foreign entities. The threshold, or flight implementation time, is 75 percent of the original equipment manufacturer's design service goal. Information received from several of the affected manufacturers confirmed the accuracy of the database.

Noise restrictions on airplanes also have an impact on the estimate of the number or airplanes affected by the rule. Because of noise restrictions, as of January 1, 2000, Stage 1 and Stage 2 airplanes will not longer be allowed to operate in the continental United States; and the FAA assumes that U.S. operators will either retire or sell to foreign entities those models that are *exclusively* State 1 or Stage 2 airplanes. This relates to airplanes such as the BAC 1–11 and Fokker F–28.

The database of airplanes used for this analysis includes data that are effective as of January 1, 1999. To carry out calculations, the FAA assumed that airplanes in that database that still had Stage 2 hush kits would not be equipped with Stage 3 hush kits by the end of 1999. These airplanes were, thus, not included in the calculations. The FAA recognizes that an underestimate of the number of airplanes with Stage 2 hush kits may thus occur; however, the FAA believes that number to be small and indeterminate. This estimate includes both N-registered airplanes operated by airlines as well as by non-airline entities, but does not include any additional airplanes that might be imported. It also does not include future production (*i.e.* ''new'') airplanes that may reach the threshold before 2022, the estimate of which would be highly tenuous and whose present value costs will be low or zero.

• Repair Assessment and Supplemental Inspection Costs: The activities involved in the entire repair assessment program can be classified into three basic stages. The first stage requires that a certificate holder (*i.e.,* an operator) incorporate a repair assessment program into this maintenance or inspection program by the time that an airplane, for that particular model, reaches its flight cycle implementation time (*e.g.,* the threshold) or within one year from the effective date of the rule—whichever occurs later. The actual outcome between these two possibilities is affected by the actual number of flight cycles in relationship to the design service goal of the airplane at the effective date of the rule.

The second stage involves repair assessments. This work is to be conducted, for individual airplanes, within the D-check or C-check flight cycle interval after the first stage. The D-check interval is used for airplanes whose flight cycles will not have exceeded their design service goal by the effective date of the rule. The C-check interval is used for those airplanes that will have exceeded their design service goal by the effective date of the rule. In this second stage, the previous repairs to the fuselages of the affected airplanes are assessed, by operators' maintenance personnel, to check whether they meet the damage-tolerance criteria. If they do, additional work is not required. If they do not, these repairs are to be repaired again and brought up to the expected quality.

During the third stage, these repairs are to be inspected at the C-check interval of that particular airplane model.

With regard to specific chronology, given an expected effective date of the rule of 2000 and the requirements in the rule, the repair assessment will be conducted at the next heavy maintenance D-check after January 1, 2001, or after the threshold, whichever occurs later. For those airplanes that have exceeded the design service goal, by the effective date of the rule. The repair assessment will be conducted at the next C-check after January 2001.

The AAWG estimated the number of repairs for airplanes, in each affected airplane model, that would require assessment at the appropriate date, and the number of those repairs that would require supplemental inspections. The AAWG also estimated that it would take 1 hour to assess a repair and 2 hours to inspect a repair. For supplemental inspections, the AAWG estimated that ½ of the repairs would require inspections during every C-check, while the other half would require inspections during every fourth children-check. Manufacturers and operators provided information on the average number of flight hours between C-checks and D-checks, by affected model. The AAWG estimated that affected airplanes would continue to be operated for 10 years beyond the dates of their repair assessments.

The FAA has estimated operator compliance costs for repair assessment and supplemental inspections through the year 2022 to the $17.4 million, or $6.0 million discounted to present value.

• Training Costs: Operators of affected U.S.-registered airplanes will incur costs in order to train their maintenance personnel to assess and inspect repairs. Moreover, it is expected that, rather than train their own maintenance personnel, operators with only a few affected airplanes will likely contract out assessments and inspections with other operators whose maintenance personnel have been trained to conduct these activities.

The FAA assumes that training costs for operators' maintenance personnel would be incurred in 2000. Moreover, in order to account for turnover among maintenance personnel trained for repair assessment, the FAA estimates that operators would incur annual training costs, equal to 5 percent of the 2000 training costs, for each year from

2001 through 2022. Operators' costs for training are described in more detail in the full regulatory evaluation.

The FAA estimates that total training costs over the years 2000 through 2022 will be $869,842, or $643,279 discounted to present value.

• Administrative Costs of the Repair Assessment Program: The rule will require each affected operator to integrate a repair assessment program into either its maintenance program (for affected airplanes operated under part 121 or 129) or its inspection program (for affected airplanes operated under part 91 or 125) by the time the threshold is reached or within one year from the effective date of the proposed rule, whichever is later. The repair assessment program can include such information as:

- The scope of the assessment;
- Relevant Airworthiness Directives (AD) and Service Bulletins (SB);
- The means to identify, assess, and inspect repairs; and
- Procedures to maintain records for each airplane's repair survey, assessments, and supplemental inspections.

Costs to operators for program administration are estimated to total $0.7 million, or $0.3 million discounted to present value.

Based on estimates of manufacturers, operators, the AAWG, and the FAA, over the years 2000 through 2022, operators of airplanes affected by the proposed rule are expected to incur total costs of $19.0 million, or $6.9 million discounted to present value. Repair assessments and supplemental inspection costs account for about 92 percent of total costs and 86 percent of present value costs.

Costs to the FAA

The rule requires FAA approval of repair assessment programs. Aircraft Certification Offices (ACO) will review repair assessment guidelines for airline and non-airline operators. The FAA Principal Maintenance Inspectors (PMI) will review the maintenance programs for their assigned airlines to ensure implementation and compliance with the repair assessment program. In addition, PMI's and other FAA inspectors also will be trained to conduct repair assessments and supplemental inspections. It is estimated that the total cost to the FAA will be $548,353, or $344,695 discounted to present value.

Total Costs of the Rule

Total costs of the rule to manufacturers, operators, and the FAA are estimated to be $59.1 million over the years 2000 through 2022, or $32.5 million in present value.

Benefits

Based on available data, no accidents have been caused by the failure of structural repairs to airplanes of the models affected by the rule. Nevertheless, these airplanes being operated beyond their design service objective and the FAA has determined that the repair assessment program is needed to maintain the continued airworthiness of these aging airplanes. The FAA is unable to determine the number of accidents that would be prevented by this rule. However, only one serious accident needs to be avoided in order to offset the total cost of the rule. Based on International Aircraft Price Guide *[Summer 1994: Airclaims Limited: London, England]*, the FAA estimated that the weighted average value of an affected airplane is $10.8 million, in constant dollars. Using a conservative load factor of 63 percent for passenger airplanes and accounting for those airplanes that are operated in cargo service, the weighted average number of occupants is 103. Using $2.7 million as the statistical value of a fatality avoided, the average cost of an accident to an affected airplane resulting in the loss of the airplane and half of its occupants, would be $150.9 million, including $1 million for accident investigation. If this accident occurred halfway between the first and last year of repair assessments in this analysis (*i.e.,* between 2001 and 2022), the present value of benefits is estimated to be $46.8 million.

Benefits Compared to Costs

The benefits of the rule are estimated at $46.8 million, at present value, while the costs of the rule are estimated at $32.5 million at present value. The FAA, therefore, has determined that if the rule prevents one ''average'' accident, the repair assessment program will be cost-beneficial.

Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) of 1980, 5 U.S.C. 601–612, directs the FAA to fit regulatory requirements to the scale of the business, organizations, and governmental jurisdictions subject to the regulation. We are required to determine whether a proposed or final action will have a ''significant economic impact on a substantial number of small entities'' as defined in the Act. If we find that the action will have a significant impact, we must do a ''regulatory flexibility analysis.''

This final rule will affect manufacturers and operators of airplanes, in the specified parts of the CFR. For both manufacturers and operators, a small entity is currently defined as one with 1,500 or fewer employees. None of the airplane manufacturers that are affected by this final rule have employee levels that fall below this employment threshold. Consequently, the FAA certifies that the final rule will not have a significant economic impact on a substantial number of manufacturers of airplanes.

Some operators, however, do have employee levels that fall below the employment threshold. Consequently, calculations were carried out to assess whether the rule will have a significant impact on a substantial number of these operators. These calculations showed that the annualized cost of the rule is very small in comparison to annual revenues of the affected entities—considerably smaller than 1 percent of their revenues. Consequently, the rule will not have a significant impact on small operators.

International Trade Impact Assessment

The provisions of this rule will have little or no impact on trade for U.S. firms doing business in foreign countries and foreign firms doing business in the United States.

Executive Order 13132, Federalism

The FAA has analyzed this final rule under the principles and criteria of Executive Order 13132, Federalism. We determined that this action will not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, the FAA has determined that this rule does not have federalism implications.

Unfunded Mandates Analysis

Title II of the Unfunded Mandates Reform Act of 1995 (the Act), codified as 2 U.S.C. 1501–1571, requires each Federal agency, to the extent permitted by law, to prepare a written assessment of the effects of any Federal mandate in a proposed or final agency rule that may result in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of $100 million or more (adjusted annually for inflation) in any one year. Section 204(a) of the Act, 2 U.S.C. 1534(a), requires the Federal agency to develop an effective process to permit timely input by elected officers (or their designees) of State, local, and tribal governments on a proposed ''significant intergovernmental mandate.'' A ''significant intergovernmental

mandate'' under the Act is any provision in a Federal agency regulation that would impose an enforceable duty upon State, local, and tribal governments, in the aggregate, of $100 million (adjusted annually for inflation) in any one year. Section 203 of the Act, 2 U.S.C. 1533, which supplements section 204(a), provides that before establishing any regulatory requirements that might significantly or uniquely affect small governments, the agency shall have developed a plan that, among other things, provides for notice to potentially affected small governments, if any, and for a meaningful and timely opportunity to provide input in the development of regulatory proposals.

This rule does not contain a Federal intergovernmental or private sector mandate that exceeds $100 million in any one year.

Environmental Analysis

FAA Order 1050.1D defines FAA actions that may be categorically excluded from preparation of a National Environmental Policy Act (NEPA) environmental assessment or environmental impact statement. In accordance with FAA Order 1050.1D, appendix 4, paragraph 4(j), this rulemaking action qualifies for a categorical exclusion.

Regulations Affecting Intrastate Aviation in Alaska

Section 1205 of the FAA Reauthorization Act of 1996 (110 Stat. 3213) requires the Administrator, when modifying regulations in Title 14 of the CFR in a manner affecting intrastate aviation in Alaska, to consider the extent to which Alaska is not served by transportation modes other than aviation, and to establish such regulatory distinctions as he or she considers appropriate. Because this amendment applies to the operation of certain transport category airplanes under parts 91, 121, 125, and 129 of Title 14, it could affect intrastate aviation in Alaska. Because no comments were received regarding this regulation affecting intrastate aviation in Alaska, the FAA will apply the rule in the same way that it is being applied nationally.

Energy Impact

The energy impact of the rule has been assessed in accordance with the Energy Policy and Conservation Act (EPCA) Pub. L. 94–163, as amended (43 U.S.C. 6362) and FAA Order 1053.1. It has been determined that the final rule is not a major regulatory action under the provisions of the EPCA.

List of Subjects

14 CFR Part 91

Aircraft, Aviation safety, Federal Aviation Administration, Reporting and recordkeeping requirements.

14 CFR Part 121

Air carriers, Aircraft, Aviation Safety, Federal Aviation Administration, Reporting and recordkeeping requirements, Safety, Transportation.

14 CFR Part 125

Aircraft, Aviation safety, Federal Aviation Administration, Reporting and recordkeeping requirements.

14 CFR Part 129

Air carriers, Aircraft, Aviation Safety, Federal Aviation Administration, Reporting and recordkeeping requirements.

The Amendment

In consideration of the foregoing, the Federal Aviation Administration amends parts 91, 121, 125, and 129 of Title 14, Code of Federal Regulations as follows:

PART 91—GENERAL OPERATING AND FLIGHT RULES

1. The authority citation for part 91 continues to read:

Authority: 49 U.S.C. 106(g), 40103, 40113, 40120, 44101, 44111, 44701, 44709, 44711, 44712, 44715, 44716, 44717, 44722, 46306, 46315, 46316, 46502, 46504, 46506–46507, 47122, 47508, 47528–47531.

2. Add a new § 91.410 to read as follows:

§ 91.410 Repair assessment for pressurized fuselages.

No person may operate an Airbus Model A300 (excluding the –600 series), British Aerospace Model BAC 1–11, Boeing Model, 707, 720, 727, 737 or 747, McDonnell Douglas Model DC–8, DC–9/MD–80 or DC–10, Fokker Model F28, or Lockheed Model L–1011 airplane beyond applicable flight cycle implementation time specified below, or May 25, 2001, whichever occurs later, unless repair assessment guidelines applicable to the fuselage pressure boundary (fuselage skin, door skin, and bulkhead webs) that have been approved by the FAA Aircraft Certification Office (ACO), or office of the Transport Airplane Directorate, having cognizance over the type certificate for the affected airplane are incorporated within its inspection program:

(a) For the Airbus Model A300 (excluding the –600 series), the flight cycle implementation time is:

(1) Model B2: 36,000 flights.

(2) Model B4–100 (including Model B4–2C): 30,000 flights above the window line, and 36,000 flights below the window line.

(3) Model B4–200: 25,000 flights above the window line, and 34,000 flights below the window line.

(b) For all models of the British Aerospace BAC 1–11, the flight cycle implementation time is 60,000 flights.

(c) For all models of the Boeing 707, the flight cycle implementation time is 15,000 flights.

(d) For all models of the Boeing 720, the flight cycle implementation time is 23,000 flights.

(e) For all models of the Boeing 727, the flight cycle implementation time is 45,000 flights.

(f) For all models of the Boeing 737, the flight cycle implementation time is 60,000 flights.

(g) For all models of the Boeing 747, the flight cycle implementation time is 15,000 flights.

(h) For all models of the McDonnell Douglas DC–8, the flight cycle implementation time is 30,000 flights.

(i) For all models of the McDonnell Douglas DC–9/MD–80, the flight cycle implementation time is 60,000 flights.

(j) For all models of the McDonnell Douglas DC–10, the flight cycle implementation time is 30,000 flights.

(k) For all models of the Lockheed L–1011, the flight cycle implementation time is 27,000 flights.

(l) For the Fokker F–28 Mark 1000, 2000, 3000, and 4000, the flight cycle implementation time is 27,000 flights.

PART 121—CERTIFICATION AND OPERATIONS: DOMESTIC, FLAG, AND SUPPLEMENTAL AIR CARRIERS AND COMMERCIAL OPERATORS OF LARGE AIRCRAFT

1. The authority citation for part 121 continues to read:

Authority: 49 U.S.C. 106(g), 40113, 40119, 44101, 44701–44702, 44705, 44709–44711, 44713, 44716–44717, 44722, 44901, 44903–44904, 44912, 46105.

2. Add a new § 121.370 to read as follows:

§ 121.370 Repair assessment for pressurized fuselages.

No certificate holder may operate an Airbus Model A300 (excluding the –600 series), British Aerospace Model BAC 1–11, Boeing Model 707, 720, 727, 737, or 747, McDonnel Douglas Model DC–8, DC–9/MD–80 or DC–10, Fokker Model F28, or Lockheed Model L–1011 airplane beyond the applicable flight cycle implementation time specified below, or May 25, 2001, whichever

occurs later, unless operations specifications have been issued to reference repair assessment guidelines applicable to the fuselage pressure boundary (fuselage skin, door skin, and bulkhead webs), and those guidelines are incorporated in its maintenance program. The repair assessment guidelines must be approved by the FAA Aircraft Certification Office (ACO), or office of the Transport Airplane Directorate, having cognizance over the type certificate for the affected airplane.

(a) For the Airbus Model A300 (excluding the –600 series), the flight cycle implementation time is:

(1) Model B2: 36,000 flights.

(2) Model B4–100 (including Model B4–2C): 30,000 flights above the window line, and 36,000 flights below the window line.

(3) Model B4–200: 25,000 flights above the window line, and 34,000 flights below the window line.

(b) For all models of the British Aerospace BAC 1–11, the flight cycle implementation time is 60,000 flights.

(c) For all models of the Boeing 707, the flight cycle implementation time is 15,000 flights.

(d) For all models of the Boeing 720, the flight cycle implementation time is 23,000 flights.

(e) For all models of the Boeing 727, the flight cycle implementation time is 45,000 flights.

(f) For all models of the Boeing 737, the flight cycle implementation time is 60,000 flights.

(g) For all models of the Boeing 747, the flight cycle implementation time is 15,000 flights.

(h) For all models of the McDonnell Douglas DC–8, the flight cycle implementation time is 30,000 flights.

(i) For all models of the McDonnell Douglas DC–9/MD–80, the flight cycle implementation time is 60,000 flights.

(j) For all models of the McDonnell Douglas DC–10, the flight cycle implementation time is 30,000 flights.

(k) For all models of the Lockheed L–1011, the flight cycle implementation time is 27,000 flights.

(l) For the Fokker F–28 Mark 1000, 2000, 3000, and 4000, the flight cycle implementation time is 60,000 flights.

PART 125—CERTIFICATION AND OPERATIONS: AIRPLANES HAVING A SEATING CAPACITY OF 20 OR MORE PASSENGERS OR A MAXIMUM PAYLOAD CAPACITY OF 6,000 POUNDS OR MORE

1. The authority citation for part 125 continues to read:

Authority: 49 U.S.C. 106(g), 40113, 44701–44702, 44705, 44710–44711, 44713, 44716–44717, 44722.

2. Add a new § 125.248 to read as follows:

§ 125.248 Repair assessment for pressurized fuselages.

No person may operate an Airbus Model A300 (exlcuding the –600 series), British Aerospace Model BAC 1–11, Boeing Model 707, 720, 727, 737 or 747, McDonnell Douglas Model DC–8, DC–9/MD–80 or DC–10, Fokker Model F28, or Lockheed Model L–1011 beyond the applicable flight cycle implementation time specified below, or May 25, 2001, whichever occurs later, unless operations specifications have been issued to reference repair assessment guidelines applicable to the fuselage pressure boundary (fuselage skin, door skin, and bulkhead webs), and those guidelines are incorporated in its maintenance program. The repair assessment guidelines must be approved by the FAA Aircraft Certification Office (ACO), or office of the Transport Airplane Directorate, having cognizance over the type certificate for the affected airplane.

(a) For the Airbus Model A300 (excluding the –600 series), the flight cycle implementation time is:

(1) Model B2: 36,000 flights.

(2) Model B4–100 (including Model B4–2C): 30,000 flights above the window line, and 36,000 flights below the window line.

(3) Model B4–200: 25,000 flights above the window line, and 34,000 flights below the window line.

(b) For all models of the British Aerospace BAC 1–11, the flight cycle implementation time is 60,000 flights.

(c) For all models of the Boeing 707, the flight cycle implementation time is 15,000 flights.

(d) For all models of the Boeing 720, the flight cycle implementation time is 23,000 flights.

(e) For all models of the Boeing 727, the flight cycle implementation time is 45,000 flights.

(f) For all models of the Boeing 737, the flight cycle implementation time is 60,000 flights.

(g) For all models of the Boeing 747, the flight cycle implementation time is 15,000 flights.

(h) For all models of the McDonnell Douglas DC–8, the flight cycle implementation time is 30,000 flights.

(i) For all models of the McDonnell Douglas DC–9/MD–80, the flight cycle implementation time is 60,000 flights.

(j) For all models of the McDonnell Douglas DC–10, the flight cycle implementation time is 30,000 flights.

(k) For all models of the Lockheed L–1011, the flight cycle implementation time is 27,000 flights.

(l) For the Fokker F–28 Mark, 1000, 2000, 3000, and 4000, the flight cycle implementation time is 60,000 flights.

PART 129—OPERATIONS: FOREIGN AIR CARRIERS AND FOREIGN OPERATORS OF U.S.—REGISTERED AIRCRAFT ENGAGED IN COMMON CARRIAGE

1. The authority citation for part 129 continues to read:

Authority: 49 U.S.C. 106(g), 40104–40105, 40113, 40119, 44701–44702, 44712, 44716–44717, 44722, 44901–44904, 44906.

2. Add a new § 129.32 to read as follows:

§ 129.32 Repair assessment for pressurized fuselages.

No foreign air carrier or foreign persons operating a U.S. registered airplane may operate an Airbus Model A300 (excluding −600 series), British Aerospace Model BAC 1–11, Boeing Model 707, 720, 727, 737, or 747, McDonnell Douglas Model DC–8, DC–9/MD–80 or DC–10, Fokker Model F28, or Lockheed Model L–1011 beyond the applicable flight cycle implementation time specified below, or May 25, 2001, whichever occurs later, unless operations specifications have been issued to reference repair assessment guidelines applicable to the fuselage pressure boundary (fuselage skin, door skin, and bulkhead webs), and those guidelines are incorporated in its maintenance program. The repair assessment guidelines must be approved by the FAA Aircraft Certification Office (ACO), or office of the Transport Airplane Directorate, having cognizance over the type certificate for the affected airplane.

(a) For the Airbus Model A300 (excluding the –600 series), the flight cycle implementation time is:

(1) Model B2: 36,000 flights.

(2) Model B4–100 (including Model B4–2C): 30,000 flights above the window line, and 36,000 flights below the window line.

(3) Model B4–200: 25,500 flights above the window line, and 34,000 flights below the window line.

(b) For all models of the British Aerospace BAC 1–11, the flight cycle implementation time is 60,000 flights.

(c) For all models of the Boeing 707, the flight cycle implementation time is 15,000 flights.

(d) For all models of the Boeing 720, the flight cycle implementation time is 23,000 flights.

(e) For all models of the Boeing 727, the flight cycle implementation time is 45,000 flights.

(f) For all models of the Boeing 737, the flight cycle implementation time is 60,00 flights.

(g) For all models of the Boeing 747, the flight cycle implementation time is 15,000 flights.

(h) For all models of the McDonnell Douglas DC–8, the flight cycle implementation time is 30,000 flights.

(i) For all models of the McDonnell Douglas DC–9/MD–80, the flight cycle implementation time is 60,000 flights.

(j) For all models of the McDonnell Douglas DC–10, the flight cycle implementation time is 30,000 flights.

(k) For all models of the Lockheed L–1011, the flight cycle implementation time is 27,000 flights.

(l) For the Fokker F–28 Mark 1000, 2000, 3000, and 4000, the flight cycle implementation time is 60,00 flights.

Issued in Washington, DC, on April 19, 2000.

Jane F. Garvey,

Administrator of Federal Aviation Administration (FAA).

[FR Doc. 00–10220 Filed 4–24–00; 8:45 am]

BILLING CODE 4910–13–M

COMMODITY FUTURES TRADING COMMISSION

17 CFR Part 4

RIN 3038–AB34

Commodity Pool Operators; Exclusion for Certain Otherwise Regulated Persons From the Definition of the Term ''Commodity Pool Operator''

AGENCY: Commodity Futures Trading Commission.

ACTION: Final rule.

SUMMARY: The Commodity Futures Trading Commission (''Commission''or ''CFTC'') is adopting Rule 4.5(a)(4)(v), which adds a plan defined as a church plan in Section 3(33) of Title I of the Employee Retirement Income Security Act of 1974 (''ERISA'') [1] (''Church Plan'') to the types of employee benefit plans that Rule 4.5(a)(4) currently provides shall not be construed to be commodity pools. The CFTC also is adopting conforming amendments to Rule 4.5(a)(4).

EFFECTIVE DATE: April 25, 2000.

FOR FURTHER INFORMATION CONTACT: Barbara S. Gold, Assistant Chief Counsel, or Christopher W. Cummings, Special Counsel, Division of Trading and Markets, Commodity Futures Trading Commission, Three Lafayette Center, 1155 21st Street, NW., Washington, DC 20581. Telephone: (202) 418–5450.

SUPPLEMENTARY INFORMATION: On March 1, 2000 the Commission published for comment proposed amendments to Rule 4.5(a)(4)(the ''Proposal''.[2] The sole substantive amendment the Commission proposed was to add a plan defined as a church plan in section 3(33) of the Employee Retirement Income Security Act of 1974 (''ERISA'') to the types of employee benefit plans that the rule provided shall not be construed to be commodity pools. This was proposed to be accomplished by adding a new paragraph (a)(4)(v) to the rule. In proposing this action, the Commission discussed generally the history of Rule 4.5,[3] it noted that Congress had exempted Church Plans from coverage under Titles I and IV of ERISA [4] ''to avoid excessive Government entanglement with religion in violation of the First Amendment to the Constitution'' [5] and it further noted that more recently, in connection with the adoption of the National Securities Markets Improvement Act of 1996 (''NSMIA''),[6] Congress provided that Church Plans are not investment companies under the Investment Company Act of 1940 and therefore that they are not subject to registration as such.[7]

The various technical amendments the Commission proposed to Rule 4.5(a)(4) were to conform the punctuation of the rule and to accommodate grammatically proposed paragraph 4.5(a)(4)(v). The Commission did not propose to change the text of any of the paragraphs Rule 4.5(a)(4)(i)–(iv).

The Commission specifically requested comment on two aspects of the proposal. As the Commission stated:

> The proposal would be broader than the [commodity pool operator (''CPO'')] registration no-action positions that its staff previously has issued to the operators of Church Plans.[8] Also, under this proposal the operators of Church Plans would not need to file a Notice of Eligibility to claim relief and they would not need to restrict their Plans' activities to the operating criteria of Rule 4.5(c). The Commission believes the breadth of its proposal is appropriate in light of Congress' rationale in excluding Church Plans from coverage under Titles I and IV of ERISA. The Commission nonetheless requests comment on whether rather than adding Church Plans to the list of plans that should not be construed to be a pool as proposed, the Commission should include the operator of a Church Plan as an eligible person who may claim an exclusion from the CPO definition. The Commission also requests comment on whether relief under Rule 4.5 should be available solely to those Church Plans that have not made an election under Section 410(d) of the Internal Revenue Code [''IRC''] to be subject to certain provision of ERISA.[9]

The Commission received two comment letters on the Proposal. Neither of the letters the Commission received on the proposed amendments to Rule 4.5(a)(4) addressed specifically the two issues on which the Commission had requested comment. One letter, from counsel to a Church Plan, expressed strong approval of the Proposal. The letter also stated that an additional support for the Proposal's adoption is that the rights of Church Plan participants are fully protected by the exclusive benefits requirements imposed on Church Plans by the IRC. The other letter, from a member of the commodities bar, asked the Commission to adopt a policy and implementing regulations to the effect that ''a collective investment vehicle using commodity interests solely for recognized risk management purposes is not 'commodity pool' within the intent of the [commodity pool operator] definition in section 1a(4) of the Commodity Exchange Act.'' While this comment is outside the scope of this

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[1] 29 U.S.C. 1002(33) (1994).

[2] 65 FR 10939, corrected at 65 FR 12318 (March 8, 2000).

[3] See 65 FR 10939 at 10940–41.

[4] 29 U.S.C. 1001 (1994 and Supp. III 1997) and 1301 (1994), respectively.

[5] See 65 FR 10939 at 10941–42.

[6] Pub. L. No. 104–290, 110 Stat. 3416 (1996).

[7] See 65 FR 10939 at 10942. This exemption has been codified at 15 U.S.C. 80a–3(c)(14) (Supp II 1996).

[8] In its footnote to this statement, the Commission explained that:

> If a collective investment vehicle (such as a Church Plan) is not a commodity pool, the operator of the vehicle would not be a CPO. The operator would nonetheless be a person for all other purposes of the [Commodity Exchange Act (''Act'')] and CFTC rules—*e.g.*, it would be subject to the general antifraud provisions of section 4b of the Act, 7 U.S.C. 6b(1994), and to the large trader reporting requirements of Part 18 of the regulations. If a collective investment vehicle is a pool, in addition to being a person for the purposes of the Act and the rules, its operator would be a CPO subject to all provisions of the Act and Commission rules applicable to CPOs regardless of registration status—*e.g.*, to the special antifraud provisions for CPOs (and [commodity trading advisors (''CTAs'')] in section 4o of the Act, 7 U.S.C. 6o (1994), the operational requirements for CPOs in Rule 4.20 and the advertising requirements for CPOs (and CTAs) in Rule 4.41.
>
> In this regard, the Commission wishes to emphasize that the status of a collective investment vehicle as a pool or a ''non-pool'' does not affect the registration or Part 4 requirements of any CTA to the vehicle. But see Rule 4.14(a)(8), which makes available an exemption from CTA registration to certain registered investment advisers who, among other things, provide commodity interest trading advice to Rule 4.5 trading vehicles in a manner solely incidental to their business of providing securities advice to those vehicles. 65 FR 10939 at 10942, n.26.

[9] 65 FR 10939 at 10942.

rulemaking, the Commission does intend to consider this issue in the near future.

In light of the comments received, the Commission is adopting the amendments to Rule 4.5(a)(4) as proposed.

III. Related Matters

A. Paperwork Reduction Act

When publishing proposed rules, the Paperwork Reduction Act of 1995 (''PRA'') [10] imposes certain requirements on Federal agencies (including the Commission) in connection with their conducting or sponsoring any collection of information as defined by the PRA. In compliance with the PRA, the Commission previously has submitted Rule 4.5 in proposed form and its associated information collection requirements to the Office of Management and Budget. The Office of Management and Budget has approved the collection of information of which this proposed rule is a part through September 30, 2001, OMB Control Number 3038–0005: Rules Relating to the Operations and Activities of Commodity Pool Operators and Commodity Trading Advisors and to Monthly Reporting by Futures Commission Merchants. While this proposed rule has no burden, the group of rules (3038–0005) of which it is a part has the following burden:

Average Burden Hours Per Response: 7.49.

Number of Respondents: 6,949.

Frequency of Response: Monthly, Quarterly, Annually, On Occasion.

Copies of the OMB approved information collection package associated with this rule are available from the Desk Officer, CFTC, Office of Management and Budget, Room 10202, NEOB, Washington, DC, 20503, (202) 395–7340.

B. Regulatory Flexibility Act

The Regulatory Flexibility Act (''RFA'') [11] requires each federal agency to consider in the course of proposing substantive rules the effect of those rules on small entities. The definitions of small entities that the Commission has established for this purpose do not address the persons and qualifying entities set forth in Rule 4.5 because, by the very nature of the rule, the operations and activities of such persons and entities generally are regulated by Federal and State authorities other than the Commission. Assuming, arguendo, that Church Plans would be small entities for purposes of the RFA, the Commission believes that the amendment to Rule 4.5(a)(4) would not have a significant economic impact on them because it would not require the filing of a notice containing specified operating criteria with the Commission to claim the relief available under the rule. Moreover, the Commission notes that the amendment potentially would relieve a greater number of persons (*i.e.,* the operators of Church Plans) from the requirement to register as a CPO and from the disclosure, reporting and recordkeeping requirements applicable to registered CPOs.

Accordingly, the Chairman, on behalf of the Commission, certifies pursuant to Section 3(a) of the RFA [12] that amended Rule 4.5(a)(4) will not have a significant economic impact on a substantial number of small entities.

C. Administrative Procedure Act.

The Administrative Procedure Act provides that the required publication of a substantive rule shall be made not less than 30 days before its effective date, but provides an exception for ''a substantive rule which grants or recognizes an exemption or relieves a restriction.'' [13] Because Rule 4.5(a)(4)(v) provides that Church Plans shall not be construed to be pools, the operators of Church Plans are not CPOs and they are not subject to regulation as CPOs under the Act. Accordingly, the Commission has determined to make the proposed amendments to Rule 4.5 effective immediately.

List of Subjects in 17 CFR Part 4

Commodity pool operators, Commodity futures.

In consideration of the foregoing and pursuant to the authority contained in the Commodity Exchange Act and, in particular, sections 1a(4), 4k, 4*l*, 4m, 4n, 4*o* and 8a, 7 U.S.C. 1a(4), 6k, 6*l*, 6m, 6n, 6*o* and 12a, the Commodity Futures Trading Commission hereby amends Chapter I of Title 17 of the Code of Federal Regulations as follows:

PART 4—COMMODITY POOL OPERATORS AND COMMODITY TRADING ADVISORS

1. The authority citation for Part 4 continues to read as follows:

Authority: 7 U.S.C. 1a, 2, 4, 6b, 6c, 6*l*, 6m, 6n, 6*o*, 12a and 23.

2. In § 4.5, in paragraph (a)(4) introductory text, the proviso text is republished and paragraph (a)(4) is amended by removing the word ''and'' at the end of paragraph (a)(4)(ii), by removing the period and adding a semi-colon at the end of paragraph (a)(4)(iii), by removing the period at the end of paragraph (a)(4)(iv) and adding ''; and'' in its place, and by adding paragraph (a)(4)(v) to read as follows:

§ 4.5 Exclusion for certain otherwise regulated persons from the definition of the term ''commodity pool operator.''

(a) * * *

(4) * * * *Provided, however,* That for purposes of this § 4.5 the following employee benefit plans shall be construed to be pools:

* * * * *

(v) A plan defined as a church plan in Section 3(33) of title I of the Employee Retirement Income Security Act of 1974 with respect to which no election has been made under 26 U.S.C. 410(d).

* * * * *

Issued in Washington, D.C. on April 18, 2000, by the Commission.

Catherine D. Dixon,

Assistant Secretary of the Commission.

[FR Doc. 00–10087 Filed 4–25–00; 8:45 am]

BILLING CODE 6351–01–M

[10] 44 U.S.C. 3501 *et seq.* (Supp. II 1996).

[11] 5 U.S.C. 601 *et seq.* (1994 and Supp. II 1996).

[12] 5 U.S.C. 605(b) (1994).

[13] 5 U.S.C. 553(d) (1994).

OCCUPATIONAL SAFETY AND HEALTH REVIEW COMMISSION

29 CFR Part 2201

Regulations Implementing the Electronic Freedom of Information Act

AGENCY: Occupational Safety and Health Review Commission.

ACTION: Interim final rule.

SUMMARY: The Occupational Safety and Health Review Commission is revising its Freedom of Information Act (FOIA) regulations to conform with the Electronic Freedom of Information Act Amendments of 1996 (EFOIA). The EFOIA specifies how the FOIA applies to records maintained in hard copy or electronic format. The rule implements statutory provisions that broaden public access to government information by making more records available in electronic format. The rule implements provisions that recognize the difficulty in responding to requests in the 10 working days formerly required and extends that time to 20 working days. It also provides procedures for discussing with FOIA requesters ways of tailoring requests to improve responsiveness. This interim rule amends the Review Commission's FOIA regulations to comply with the requirements of the new statute. Certain other changes have

been made to correct administrative errors and to update or remove obsolete information.

DATES: This interim final rule is effective on May 22, 2000. Comments must be submitted on or before June 26, 2000.

ADDRESSES: Written comments should be submitted to Linda A. Whitsett, Freedom of Information Act Officer, Occupational Safety and Health Review Commission, 1120 20th St., NW, Ninth Floor, Washington, DC 20036–3419.

FOR FURTHER INFORMATION CONTACT: Linda A. Whitsett, Freedom of Information Act Officer, (202) 606–5398.

SUPPLEMENTARY INFORMATION:

Background Information

EFOIA requires agencies to promulgate regulations implementing certain of its requirements, including the tracking of FOIA requests, the aggregation of FOIA requests and the expedited processing of FOIA requests. EFOIA also changes the time limit for responding to FOIA requests from 10 to 20 working days, the requirements for reporting to Congress, and the instances in which an agency may extend the time within which it will respond to a FOIA request. In addition, EFOIA includes provisions regarding the availability of documents in electronic form, the treatment of electronic records and the establishment of ''electronic reading rooms.''

The Review Commission has determined that compelling reasons exist to promulgate this interim rule without prior opportunity for public comment. This rule is necessary for immediate implementation of EFOIA. Comments received in response to the publication of this interim final rule will be considered prior to the promulgation of a final rule.

New Provisions

A. Electronic Records

At 5 U.S.C. 552(f)(2), EFOIA defines ''record,'' for purposes of FOIA, as ''any information that would be an agency record subject to the requirements of [5 U.S.C. 552] when maintained by an agency in any format, including an electronic format.'' Section 552(f) clarifies that the term ''agency record'' includes information stored in any computer readable format as well as traditional paper documents. This interim final rule amends 29 CFR 2201.4(a) to specifically include information in an electronic format within the definition of the agency's ''General Policy, Non-exempt records available to the public.''

B. Electronic Reading Room

5 U.S.C. 552(a)(2) broadens the requirement for agencies to make available for public inspection and copying certain information, such as agency opinions, policy statements and interpretations not published in the **Federal Register**, administrative staff manuals and staff instructions that affect a member of the public. EFOIA expands section 552(a)(2) to include agency records that have been made publicly available and are likely to be the subject of repetitive public requests, as well as a general index of these frequently sought documents. The amendments also provide that section 552(a)(2) records created on or after November 1, 1996 must be made available by computer telecommunications within one year after such date, or if computer telecommunications have not been established, by other electronic means. The general index of these records is to be available by computer telecommunications by December 31, 1999. These new requirements, as well as the on-line address for the Review Commission's homepage on the Internet, are incorporated in 29 CFR 2201.4(d).

EFOIA also requires that where materials have been withheld in records made available to the public, the extent of those deletions must be indicated on the portion of the record made available and, where technically possible, must be indicated at the place in the record where the deletion occurred. This new requirement is included at 29 CFR 2201.7(f).

C. Honoring Form or Format Requests

At 5 U.S.C. 552(a)(3), EFOIA requires that agencies make records available to the public ''in any form or format requested by the person if the record is readily reproducible by the agency'' in the requested form or format. This new requirement is included in 29 CFR 2201.6(b). EFOIA makes it clear, at 5 U.S.C. 552(a)(3)(C), that agencies should search for records in their electronic form, and in hard copy form, in response to FOIA requests, except when such searching would significantly interfere with the operation of the agency's automated information system. Also under the EFOIA amendments, ''search'' means to look for agency records manually ''or by automated means'' to locate records responsive to a request. This requirement is included in 29 CFR 2201.4(a).

D. Time Limits for Responding to Requests

5 U.S.C. 552(a)(6)(A)(I) extends the time to respond to a request to 20 working days from 10 working days, effective October 2, 1997. 29 CFR 2201.7(a) is amended to reflect this change.

E. Multitrack Processing of Requests

Congress recognized that even with lengthening the time to respond to requests, many agencies may fail to meet the 20 working day deadline for some requests. Therefore, 5 U.S.C. 552(a)(6)(D) authorizes agencies to establish ''multitrack processing.'' Under this system, requests are categorized based on the amount of agency effort involved in processing the request. This new multitrack system of course still requires the exercise of due diligence by agencies. It also requires that requesters have the opportunity to limit the scope of their requests to qualify for the processing of their request under a faster track. These new provisions are incorporated in Commission's two-track system described at 29 CFR 2201.7(d).

F. Unusual Circumstances

Congress recognized that even with multitrack processing, in some circumstances the statutory response time will be exceeded. The EFOIA retains the provisions for agencies to extend the initial 20 working day response time for an initial request, or the 20 working day response time for an appeal, by an additional 10 working days in ''unusual circumstances.'' Agencies must provide the requester with written justification for the extension and include the date of the expected response. The amendments at 29 U.S.C. 552(a)(6)(B)(iii) define ''unusual circumstances'' as time needed to search for and collect the requested records from field facilities or other establishments that are separate from the office processing the request; the need to search for, collect, and appropriately examine a voluminous amount of material sought in a single request; or the need for consultation with another agency having a substantial interest in the determination of the request or among two or more parts of the agency having substantial interest in the request. These new provisions are incorporated at 29 CFR 2201.7(b).

In addition, 5 U.S.C. 552(a)(6)(B)(ii), authorizes agencies to negotiate a response time with a requester that may exceed the statutory maximum (20 working days plus a 10 working day

extension) for those FOIA requests that the agency determines cannot be processed within the statutory time limits. The agency must offer the requester an opportunity to limit the scope of the request so that it may be processed within the prescribed 20 working days or arrange an alternative time frame for processing the request or a modified request. These new provisions are also incorporated at 29 CFR 2201.7(c).

G. Requests for Expedited Processing

At 5 U.S.C. 552(a)(6)(E)(I)(I), EFOIA requires agencies to promulgate regulations to provide for expedited processing in instances where the requester demonstrates a ''compelling need'' and in other cases where the agency determines expedited processing is warranted. A ''compelling need'' exists (1) where a failure to obtain requested records on an expedited basis could reasonably be expected to pose an imminent threat to the life or physical safety of an individual or (2) with respect to a request made by a person primarily engaged in disseminating information, there is an urgency to inform the public concerning actual or alleged Federal Government activity. The House Committee report explaining the legislation (H.R. Rep. No. 795, 104th Cong., 2d Sess. (1996)) states that a person ''primarily engaged'' in the business of information dissemination ''should not include individuals who are engaged only incidentally in the dissemination of information,'' but requires that ''information dissemination be the main activity of the requester, although it need not be their sole occupation.'' A requester who is ''only incidentally'' involved in information dissemination, in addition to other activities, would not satisfy this requirement.

The House Committee report further explains that the term ''urgency to inform,'' one of the qualifying elements for expedited processing, must involve a matter of ''current exigency to the American public'' such that any reasonable person could conclude that delaying a response to a FOIA request would compromise a ''significant recognized interest.'' The public's right to know, while ''significant and important,'' would not stand alone as sufficient to satisfy this standard. Agencies must make both ''factual and subjective judgments'' about situations cited by requesters as reasons for expedited processing and must demonstrate ''fairness and diligence'' in exercising their discretion.

Section 552(a)(6)(E)(ii)(I) requires that requesters must receive written notice within 10 calendar days after the date of the request regarding the determination of expedited processing. Once expedited processing is granted, agencies must process the request ''as soon as practicable'' under 5 U.S.C. 552(a)(6)(E)(iii) and administrative appeals of a denial of an expedited processing request must be handled with ''expeditious consideration'' under 5 U.S.C. 552(a)(6)(E)(ii)(II). If an agency denies the request for expedited processing or fails to act upon the request within the prescribed 10 calendar days, a petitioner may seek judicial review. The Commission has implemented these EFOIA requirements regarding expedited processing at 29 CFR 2201.7(e).

H. Estimates of the Volume of Materials Denied

At 5 U.S.C. 552(a)(6)(F), EFOIA requires agencies to make a reasonable effort to estimate the volume of any requested matter the provision of which is denied in whole or in part, and to inform the requester unless providing such information would harm an interest protected by a FOIA exemption on which the denial is based. This new requirement is implemented at 29 CFR 2201.7(f).

I. Annual Report to Congress

At 5 U.S.C. 552(e), EFOIA amends the annual requirements for reporting agency FOIA activities to Congress by expanding the amount of information for inclusion in the report and requiring agencies to make these reports available to the public by computer access or other electronic means. The Commission annual report is on its website at: http://www.oshrc.gov. The report is also available in the Commission Information Office. The Commission has implemented these amended EFOIA reporting requirements at 29 CFR 2201.10.

List of Subjects in 29 CFR Part 2201

Freedom of information.

For the reasons set forth in the preamble, 29 CFR part 2201 is amended as follows:

PART 2201—REGULATIONS IMPLEMENTING THE FREEDOM OF INFORMATION ACT

1. The authority citation for part 2201 continues to read as follows:

Authority: 29 U.S.C. 661(g); 5 U.S.C. 552.

2. Section 2201.4 is amended by revising paragraphs (a) and (c) and adding paragraph (d) to read as follows:

§ 2201.4 General policy.

* * * * *

(a) *Non-exempt records available to public.* Except for records and information exempted from disclosure by 5 U.S.C. 553(b) or published in the **Federal Register** under 5 U.S.C. 552(a)(1), all records of the Commission or in its custody are available to any person who requests them in accordance with § 2201.6. Records include any information that would be a record subject to the requirements of 5 U.S.C. 552 when maintained by the Review Commission in any format, including electronic format. In searching for records, the Review Commission will look for records manually or by automated means. The Review Commission will search for records in their electronic form and in hard copy form, in response to FOIA requests, except when such searching would significantly interfere with the operation of the Commission's automated information system.

* * * * *

(c) *Record availability.* The records of Review Commission activities are publicly available for inspection and copying at the OSHRC Information Office, 1120 20th St., NW, 9th Floor, Washington, DC. These records include:

(1) Final opinions including concurring and dissenting opinions as well as orders issued as a result of adjudication of cases.

(2) OSHRC Rules of Procedure and Guides to those procedures.

(3) Copies of records that have been released to a person under the Freedom of Information Act (FOIA) that, because of the subject matter, the Review Commission determines that the records have become or are likely to become the subject of subsequent requests for substantially the same records.

(4) A general index of records released under the FOIA.

(d) Materials created on or after November 1, 1996 under paragraphs (c) (1), (2), (3) and (4) of this section may also be accessed through the Internet at the Review Commission's World Wide Web site at http://www.oshrc.gov

3. In § 2201.6, paragraph (b) is revised to read as follows:

§ 2201.6 Procedure for requesting records.

* * * * *

(b) *Other information.* Persons wishing to obtain copies of documents (including the hearing transcript filed in a case before the Review Commission or a Judge, and information that is freely available under paragraph (a) of this section), shall submit a request in writing to the Freedom of Information

Act Officer at the address in § 2201.5(a). The request shall be clearly identified as a request for information under the Freedom of Information Act. The envelope or cover enclosing or covering the request shall have the phrase ''INFORMATION REQUEST'' in capital letters on it. The agency will make information available in any form or format requested by the person if the record is readily reproducible by the agency in that form or format.

* * * * *

4. § 2201.7 is amended by revising paragraph (a), redesignating paragraph (b) as paragraph (f) and revising it, redesignating paragraph (c) as paragraph (g); and adding paragraphs (b), (c), (d), (e) and (h). The revised and added text reads as follows:

§ 2201.7 Responses to requests.

(a) *Responses within 20 working days.* The Review Commission Freedom of Information Act Officer will either grant or deny a request for records within 20 working days after receiving the request.

(b) *Extensions of response time in unusual circumstances.* In unusual circumstances, the Review Commission may extend the time limit prescribed in paragraph (a) of this section by not more than 10 working days. The extension may be made by written or telephonic notice to the requester and will include an explanation of the reasons for the extension and will indicate the date on which a determination is expected to be made. ''Unusual circumstances'' exists, but only to the extent reasonably necessary to the proper processing of the particular request, when there is a need to:

(1) Search for and collect the requested records from field facilities or other establishments separate from the office processing the request;

(2) Search for, collect, and appropriately examine a voluminous amount of separate and distinct records which are demanded in a single request; or

(3) Consult, with all practicable speed, with another agency having a substantial interest in the determination of the request or among two or more components within the Review Commission having substantial subject-matter interest therein.

(c) *Additional extension.* A requester shall be notified when it appears that a request cannot be completed within the allowable time (20 working days plus a 10 working day extension). In such instances, the requester will be provided an opportunity to limit the scope of the request so that it may be processed in the time limit, or to agree to a reasonable alternative time frame for processing.

(d) *Multitrack processing.* To ensure the most equitable treatment possible for all requesters, the Commission will process requests on a first-in, first-out basis using a two track processing system based upon the estimated time it will take to process the request.

(1) The first track is for requests of simple to moderate complexity that are expected to be completed within 20 working days.

(2) The second track is for requests involving ''unusual circumstances'' that are expected to take between 21 to 30 working days to complete and those that, because of their unusual volume or other complexity, are expected to take more than 30 working days to complete.

(3) Requesters should assume, unless notified by the Review Commission, that their request is in the first track. The Review Commission will notify requesters when their request is placed in the second track for processing and that notification will include the estimated time for completion. Should subsequent information substantially change the estimated time to process a request, the requester will be notified telephonically or in writing. In the case of a request expected to take more than 30 working day for action, a requester may modify the request to allow it to be processed faster or to reduce the cost of processing. Partial responses may be sent to requesters as documents are obtained by the FOIA office from the supplying offices.

(e) *Expedited processing.* (1) The Commission may place a person's request at the front of the queue for the appropriate track for that request upon receipt of a written request that clearly demonstrates a compelling need for expedited processing. Requesters must provide detailed explanations to support their expedited requests. For purposes of determining expedited processing, the term compelling need means:

(i) That a failure to obtain requested records on an expedited basis could reasonably be expected to pose an imminent threat to the life or physical safety of any individual; or

(ii) That a request is made by a person primarily engaged in disseminating information, and that person establishes that there is an urgency to inform the public concerning actual or alleged Federal Government activity.

(2) A person requesting expedited processing must include a statement certifying the compelling need given to be true and correct to the best of his or her knowledge and belief. The certification requirement may be waived by the Review Commission as a matter of agency discretion.

(3) The FOIA Officer will make the initial determination whether to grant or deny a request for expedited processing and will notify a requester within 10 calendar days after receiving the request whether its processing will be expedited.

(4) Administrative appeals of a denial of an expedited processing request will be handled with expeditious consideration.

(f) *Content of denial.* When the Freedom of Information Act Officer denies a request, the notice of the denial shall state the reason for it and that the denial may be appealed as specified in paragraph (g) of this section. A refusal by the Freedom of Information Act Officer to process the request because the requester has not made advance payment or given a satisfactory assurance of full payment required under § 2201.8(f) may be treated as a denial of the request and appealed under paragraph (g) of this section. When release of entire records is denied in whole or in part, a reasonable effort will be made to estimate the volume of any requested matter that is denied, unless providing such an estimate would harm an interest protected by the exemption(s) under which the matter has been denied.

* * * * *

(h) *Deletions.* The amount of information deleted from records shall be indicated on the released portion of the record, unless including that indication would harm an interest protected by the exemption under which the deletion is made. If technically feasible, the amount of the information deleted shall be indicated at the place in the record where the deletion is made.

§ 2201.10 is revised to read as follows:

§ 2201.10 Maintenance of statistics.

(a) The Freedom of Information Act Officer shall maintain records of:

(1) The number of determinations made by the agency not to comply with the requests for records made to the agency and the reasons for those determinations;

(2) The number of appeals made by persons, the results of those appeals, and the reason for the action upon each appeal that results in a denial of information;

(3) A complete list of all statutes that the agency used to authorize the withholding of information under 5 U.S.C. 552(b)(3), which exempts information that is specifically exempted from disclosure by other statutes;

(4) A description of whether a court has upheld the decision of the agency to withhold information under each of those statutes cited, and a concise description of the scope of any information upheld;

(5) The number of requests for records pending before the agency as of September 30 of the preceding year and the median number of days that these requests had been pending before the agency as of that date;

(6) The number of requests for records received by the agency and the number of requests the agency processed;

(7) The median number of days taken by the agency to process different types of requests;

(8) The total amount of fees collected by the agency for processing requests;

(9) The average amount of time that the agency estimates as necessary, based on the past experience of the agency, to comply with different types of requests;

(10) The number of full-time staff of the agency devoted to the processing of requests for records under this section; and

(11) The total amount expended by the agency for processing these requests.

(b) The Freedom of Information Act Officer shall annually, on or before February 1 of each year, prepare and submit to the Attorney General an annual report covering each of the categories of records to be maintained in accordance with paragraph (a) of this section, for the previous fiscal year. A copy of the report will be available for public inspection and copying at the Commission Information Office and a copy will accessible through the Internet at OSHRC's World Wide Web site at http://www.oshrc.gov.

Dated: April 18, 2000.

Patricia A. Randle,

Executive Director.

[FR Doc. 00–10275 Filed 4–24–00; 8:45 am]

BILLING CODE 7600–01–P

NATIONAL ARCHIVES AND RECORDS ADMINISTRATION

36 CFR Part 1234

RIN 3095–AA94

Elimination of Requirement to Rewind Computer Tapes

AGENCY: National Archives and Records Administration (NARA).

ACTION: Final rule.

SUMMARY: NARA is revising its regulations to eliminate the requirement that Federal agencies rewind under controlled tension all computer tapes containing unscheduled or permanent records every 3½ years. This change will affect Federal agencies that store unscheduled or permanent records on computer open-reel tapes or tape cartridges.

DATES: Effective May 25, 2000.

FOR FURTHER INFORMATION CONTACT: Nancy Allard or Shawn Morton at (301) 713–7360.

SUPPLEMENTARY INFORMATION: This rule was published as a proposed rule for comment in the **Federal Register** on February 3, 2000 (65 FR 5295). NARA received 6 comments on the proposed rule, all supporting the change. Four comments were from Federal agencies and two comments were from private individuals.

This rule is not a significant regulatory action for the purposes of Executive Order 12866. As required by the Regulatory Flexibility Act, it is hereby certified that this rule will not have a significant impact on a substantial number of small entities because it applies to Federal agencies. This rule does not have any federalism implications.

List of Subjects in 36 CFR Part 1234

Archives and records, Computer technology.

For the reasons stated in the preamble, the National Archives and Records Administration is amending 36 CFR Part 1234 to read as follows:

PART 1234—ELECTRONIC RECORDS MANAGEMENT

Subpart C—Standards for the Creation, Use, Preservation, and Disposition of Electronic Records

1. The authority citation for part 1234 continues to read as follows:

Authority: 44 U.S.C. 2904, 3101, 3102, and 3105.

§ 1234.30 [Amended]

2. In § 1234.30, remove paragraph (g)(3) and redesignate paragraphs (g)(4) through (g)(7) as paragraphs (g)(3) through (g)(6) respectively.

Dated: April 19, 2000.

John W. Carlin,

Archivist of the United States.

[FR Doc. 00–10249 Filed 4–25–00; 8:45 am]

BILLING CODE 7515–01–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Parts 222 and 223

[Docket No. 991207322–0107–03; I.D. 041300A]

RIN 0648–AN30

Sea Turtle Conservation; Shrimp Trawling Requirements

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Temporary rule; request for comments.

SUMMARY: NMFS is imposing, for a 30-day period, an additional restriction on shrimp trawlers required to have a turtle excluder device (TED) installed in each net that is rigged for fishing, operating in Gulf of Mexico offshore waters bounded by the line originating at the tip of the south jetty at Port Mansfield Channel and terminating at the tip of the north jetty at Aransas Pass, Texas. Shrimp vessels operating in this area must use a TED with an escape opening large enough to exclude leatherback turtles, as specified in the regulations. This action is necessary to reduce mortality of endangered leatherback sea turtles incidentally captured in shrimp trawls.

DATES: This action is effective from April 19, 2000 through May 19, 2000. Comments on this action are requested, and must be received at the appropriate address or fax number (see **ADDRESSES**) by May 19, 2000.

ADDRESSES: Comments on this action should be addressed to the Chief, Endangered Species Division, Office of Protected Resources, NMFS, 1315 East-West Highway, Silver Spring, MD 20910. Comments may also be sent via fax to 301–713–0376. Comments will not be accepted if submitted via e-mail or the Internet.

FOR FURTHER INFORMATION CONTACT: Charles A. Oravetz (ph. 727–570–5312, fax 727–570–5517, e-mail Chuck.Oravetz@noaa.gov), or Barbara A. Schroeder (ph. 301–713–1401, fax 301–713–0376, e-mail Barbara.Schroeder@noaa.gov).

For assistance in modifying TED escape openings to exclude leatherback sea turtles, fishermen may contact gear specialists at the NMFS, Pascagoula, MS laboratory by phone (228)–762 4591 or by fax (228) 769–8699.

SUPPLEMENTARY INFORMATION:

Background

All sea turtles that occur in U.S. waters are listed as either endangered or threatened under the Endangered Species Act of 1973 (ESA). The Kemp's ridley (*Lepidochelys kempii*), leatherback (*Dermochelys coriacea*), and hawksbill (*Eretmochelys imbricata*) are listed as endangered. Loggerhead (*Caretta caretta*) and green (*Chelonia mydas*) turtles are listed as threatened, except for populations of green turtles in Florida and on the Pacific coast of Mexico, which are listed as endangered.

The incidental take of these species as a result of shrimp trawling activities has been documented in the Gulf of Mexico and in the Atlantic Ocean. Under the Endangered Species Act (ESA) and its implementing regulations, taking sea turtles is prohibited, with exceptions identified in 50 CFR 223.206. Existing sea turtle conservation regulations (50 CFR part 223, subpart B) require most shrimp trawlers operating in the Gulf and Atlantic areas to have a NMFS-approved TED installed in each net rigged for fishing year round.

The regulations provide a mechanism to implement further restrictions of fishing activities, if necessary to avoid unauthorized takings of sea turtles that may be likely to jeopardize the continued existence of listed species or that may violate the terms and conditions of an incidental take statement or incidental take permit. Upon a determination that incidental takings of sea turtles during fishing activities are not authorized, additional restrictions may be imposed to conserve listed species and to avoid unauthorized takings. Restrictions may be effective for a period up to 30 days and may be renewed for additional periods up to 30 days each (50 CFR 223.206(d)(4)).

Leatherback Sea Turtles

Leatherback sea turtles are the largest species of sea turtle. They weigh between 500 and 1300 pounds (272 and 590 Kg) and have carapaces 5 to 6 ft (1.5 to 1.8 m) in length. Leatherbacks are widely distributed, ranging from the tropics to sub-Arctic waters during their feeding migrations. They nest in low numbers on U.S. beaches and are primarily seen in Atlantic coastal waters of the southeast U.S. during their northern springtime migration, especially when high abundances of jellyfish occur nearshore. Less is known about the distribution of leatherbacks in the Gulf, though stranding records suggest a peak in nearshore abundance during the Spring. However, they can be found in U.S. waters throughout the year.

Because of their size, leatherbacks are not likely to escape from trawls, even when equipped with approved TEDs. The sea turtle conservation regulations specify a minimum TED opening size in the Gulf of 32 inches (89 cm) horizontally and 10 inches (30.5 cm) vertically. When the regulations requiring TEDs in shrimp trawls year round were adopted (57 FR 57348, December 4, 1992), NMFS recognized that the then-existing TEDs would not protect leatherbacks, and the biological opinion on the regulations concluded that leatherback mortality would remain a problem that must be addressed to avoid jeopardizing the recovery of this species. Consequently, the August 19, 1992, biological opinion's incidental take statement included as a term and condition which specified that the episodic take of leatherback turtles by shrimp trawlers during periods of high jellyfish abundance must be eliminated. This could be accomplished by temporary area closures, by requiring an increase in size of TED openings to allow leatherbacks to escape at times when their abundance is high, by limiting tow times, or by implementing some other protective measure. In part, to address this problem, the 1992 sea turtle conservation regulations included the provisions of 50 CFR 223.206(d)(4), to provide ''a mechanism to prevent sea turtle mortalities * * *when existing restrictions on the shrimp fishery are found to be ineffective (57 FR 18453).''

Recent Events

The Sea Turtle Salvage and Stranding Network has reported that high numbers of endangered leatherback sea turtles have stranded along the Texas coast in March and through April 8. A total of nine leatherbacks have stranded this Spring, with five of those stranding the week of April 2 on Padre Island. By comparison, the total annual number of leatherbacks stranding statewide has averaged 12 over the past 6 years. Eight of the nine animals have stranded dead, and one was rehabilitated and released after the NOAA Protected Resources Enforcement Team (PRET) rescued it from an illegal gillnet. All the leatherbacks have been adults, and one was confirmed through a necropsy as a pre-nesting female. Considering the rarity of leatherbacks—no documented nests have occurred in Texas since the 1930's (Hildebrand, 1995) and although strandings are only a minimum estimate of actual mortality, these strandings represent a serious impact to the recovery and survival of the local population.

The Spring shrimp season in the Gulf of Mexico is traditionally characterized by lighter effort than the late Summer, but offshore trawling for brown shrimp and nearshore trawling for white shrimp are currently active. National Park Service employees on Padre Island have reported shrimp trawlers operating close to the beach in the area of the leatherback strandings. The PRET has recently been patrolling the south Texas coast and has encountered trawlers working close to the beach in relatively small numbers, but many of those have been large, slab trawlers with extensive fishing power. The minimum size for TED openings specified in the sea turtle conservation regulations is not large enough to release leatherback turtles, and capture and drowning in shrimp trawls are the likely causes of most of the leatherback strandings. Even if shrimp trawling were not the cause of the strandings observed thus far, the high leatherback mortality level indicates that leatherbacks are present on and near the shrimping grounds. Leatherback turtles are likely to remain in the area for the next month, and shrimp trawling with TEDs with openings that are not large enough to release leatherbacks would be expected to continue to take leatherbacks unnecessarily.

Analysis of Other Factors

One of the leatherback strandings on Padre Island resulted from entanglement in an illegally set gillnet. That turtle was rescued, rehabilitated, and released. Two days after that turtle was found, a Mexican gillnet boat, fishing illegally in U.S. waters, was apprehended by the Coast Guard. Also that week, a shrimp trawler in the vicinity of Port Mansfield Channel was found with all four of its TEDs sewn shut. Nevertheless, shrimping conducted in compliance with the TED regulations would also be expected to capture and drown leatherbacks due to the small minimum size for TED openings. Shrimping is also the main fishery in the area of the strandings. Illegal gillnetting and shrimping are possible sources of leatherback mortality. Ongoing law enforcement efforts by the Coast Guard, Texas Parks and Wildlife Department, and the NOAA PRET will continue to address these activities and the threat they pose to sea turtles. NMFS and stranding network personnel will continue to investigate factors other than shrimping that may contribute to leatherback sea turtle mortality in Texas, including other fisheries and environmental factors.

Restrictions on Fishing by Shrimp Trawlers

Pursuant to 50 CFR 223.206(d)(4), the exemption for incidental taking of sea turtles in 50 CFR 223.206(d) does not authorize incidental takings during fishing activities if the takings would violate the restrictions, terms, or conditions of an ITS or incidental take permit, or may be likely to jeopardize the continued existence of a species listed under the ESA. The August 19, 1992, biological opinion includes a condition under the ITS that specifies that NMFS must eliminate the episodic take of leatherback turtles by shrimp trawlers through area closures, requirements for large TED opening sizes, limitations on tow times, or some other protective measure. Failure by NMFS to take action to address the mortality seen in south Texas over the past weeks would violate the ITS and result in unauthorized takings. NMFS believes that a requirement for large TED opening size is the least restrictive means available to provide additional protection for leatherback turtles. Therefore, the Assistant Administrator for Fisheries, NOAA (AA) issues this determination that further takings of leatherback turtles in Gulf of Mexico waters off south Texas by shrimp trawlers using TEDs with small escape openings are unauthorized and imposes this additional restriction to shrimp trawling activities to conserve endangered leatherback sea turtles. Specifically, the AA closes all Gulf of Mexico offshore waters seaward of the COLREGS demarcation line, bounded by the line originating at the tip of the south jetty at Port Mansfield Channel, Texas, thence due east to the point 26°33.75' N. lat, 097°05 W. long., thence slightly east of north to the point 27°50' N. lat., 096°50.7' W. long., thence due west and terminating at the tip of the north jetty at Aransas Pass, Texas, to fishing by shrimp trawlers required to have a TED installed in each net that is rigged for fishing, unless the TED installed has an escape opening large enough to exclude leatherback turtles, meeting the specifications at 50 CFR 223.207(a)(7)(ii)(B) or 223.207(c)(1)(iv)(B). These regulations specify modifications that can be made to either single-grid hard TEDs or Parker soft TEDs to allow leatherbacks to escape. This restriction is effective from April 19, 2000 through 11:59 p.m. (local time) May 19, 2000.

This restriction has been announced on the NOAA weather channel, in newspapers, and other media. Shrimp trawlers may also call (727)570–5312 for updated area closure information.

Additional Conservation Measures

The AA may withdraw or modify a determination concerning unauthorized takings or any restriction on shrimping activities if the AA determines that such action is warranted. Notification of any additional sea turtle conservation measures, including any extension of this 30-day action, will be published in the **Federal Register** pursuant to 50 CFR 223.206(d)(4).

NMFS will continue to monitor sea turtle strandings to gauge the effectiveness of these conservation measures.

References Cited

Hildebrand, H.H. 1995. A Historical Review of the Status of Sea Turtle Populations in the Western Gulf of Mexico. pp. 447–453 in Biology and Conservation of Sea Turtles, Revised Edition. K.A. Bjorndal, ed. Smithsonian Institution.

Classification

This action has been determined to be not significant for purposes of E.O. 12866.

The AA has determined that this action is necessary to respond to an emergency situation to provide adequate protection for endangered leatherback sea turtles pursuant to the ESA and other applicable law.

Pursuant to 5 U.S.C. 553(b)(B), the AA finds that there is good cause to waive prior notice and opportunity to comment on this action. It would be contrary to the public interest to provide prior notice and opportunity for comment because providing notice and comment would prevent the agency from implementing this action in a timely manner to protect endangered leatherback sea turtles. Notice and opportunity to comment were provided on the proposed rule (57 FR 18446, April 30, 1992) for the final rule establishing the procedures to take this action. Furthermore, the AA finds good cause also under 5 U.S.C. 553(d)(3) not to delay the effective date of this rule for 30 days. Such delay would also prevent the agency from implementing this action in a timely manner to protect endangered leatherback sea turtles. Accordingly, the AA is making the rule effective April 19, 2000 through May 19, 2000. Also as stated above, this restriction has been announced on the NOAA weather channel, in newspapers, and other media.

As prior notice and an opportunity for public comment are not required to be provided for this notification by 5 U.S.C. 553, or by any other law, the analytical requirements of 5 U.S.C. 601 *et seq*. are inapplicable.

The AA prepared an Environmental Assessment (EA) for the final rule (57 FR 57348, December 4, 1992) requiring TED use in shrimp trawls and creating the regulatory framework for the issuance of notifications such as this. The AA also prepared an EA for the current action. Copies of the EAs are available (see **ADDRESSES**).

Dated: April 19, 2000.

Andrew A. Rosenberg,

Deputy Assistant Administrator for Fisheries.

[FR Doc. 00–10203 Filed 4–19–00; 4:23 pm]

BILLING CODE 3510–22–F

Proposed Rules

Federal Register
Vol. 65, No. 80
Tuesday, April 25, 2000

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 99–NE–47–AD]

RIN 2120–AA64

Airworthiness Directives; Allison Engine Company 250–C18 and –C20 Series Turboshaft Engines

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes to adopt a new airworthiness directive (AD), applicable to Allison Engine Company 250–C18 and –C20 series turboshaft engines. This proposal would require a one-time visual inspection of the fuel nozzle screen for contamination. If contamination is found, this proposal would require, prior to further flight, replacement of the fuel nozzle screen with a serviceable screen, visual inspection of the entire fuel system for contamination, and repair, if necessary. In addition, this proposal would require reporting the results of the one-time inspection to the Federal Aviation Administration (FAA) to determine if repetitive inspections should be required by future rulemaking. This proposal is prompted by a report of fuel system contamination that caused blockage of the fuel nozzle screen. This blockage of the fuel nozzle screen caused an in-flight engine shutdown, autorotation, and forced landing. The actions specified by the proposed AD are intended to prevent an in-flight engine shutdown due to blockage of the fuel nozzle screen, which can result in autorotation and forced landing.

DATES: Comments must be received by June 26, 2000.

ADDRESSES: Submit comments to the Federal Aviation Administration (FAA), New England Region, Office of the Regional Counsel, Attention: Rules Docket No. 99–NE–47–AD, 12 New England Executive Park, Burlington, MA 01803–5299. Comments may also be sent via the Internet using the following address: ''9-ane-adcomment@faa.gov''. Comments sent via the Internet must contain the docket number in the subject line. Comments may be inspected at this location between 8:00 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: John Tallarovic, Aerospace Engineer, Chicago Aircraft Certification Office, FAA, Small Airplane Directorate, 2300 E. Devon Ave., Des Plaines, IL 60018; telephone (847) 294–8180, fax (847) 294–7834.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications should identify the Rules Docket number and be submitted to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket Number 99–NE–47–AD.'' The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, New England Region, Office of the Regional Counsel, Attention: Rules Docket No. 99–NE–47–AD, 12 New England Executive Park, Burlington, MA 01803–5299.

Discussion

The Federal Aviation Administration (FAA) has received a report of a McDonnell Douglas Helicopter Systems 369D helicopter with an Allison Engine Company Model 250–C20B turboshaft engine that lost power at approximately 150 feet and autorotated to a forced landing. The subsequent investigation revealed contamination at the fuel pump filter, fuel control unit screen, and the fuel nozzle screen. Three additional loss of power events dating back to 1994 have been associated with some level of fuel system contamination. In each case, the fuel nozzle screen was contaminated. This condition, if not corrected, could result in an in-flight engine shutdown due to blockage of the fuel nozzle screen, which can result in autorotation and forced landing.

Proposed Actions

Since an unsafe condition has been identified that is likely to exist or develop on other products of this same type design, the proposed AD would require a one-time visual inspection of the fuel nozzle screen for contamination at the next scheduled 300-hour inspection or after 300 hours time-in-service from the effective date of the AD, whichever occurs first. If contamination is found, this proposal would require, prior to further flight, replacement of the fuel nozzle screen with a serviceable screen, visual inspection of the entire fuel system for contamination, and repair, if necessary. These proposed actions have been coordinated with the Rotorcraft Directorate of the FAA. In addition, this proposal would require reporting the results of the one-time inspection to the FAA to determine if repetitive inspections may be required by future rulemaking. The actions would be required to be accomplished in accordance with the service information described previously.

Economic Analysis

There are approximately 14,000 engines of the affected design in the worldwide fleet. The FAA estimates that 6,000 engines installed on rotorcraft of US registry would be affected by this proposed AD, that it would take approximately 1 work hour per engine

to accomplish the visual inspection of the fuel nozzle screen, and that the average labor rate is $60 per work hour. Required parts would cost approximately $150 per engine. If the fuel nozzle screen is contaminated, it must be replaced and the entire fuel system must be inspected. The FAA estimates these actions to take 8 work hours, with a parts cost of $2,600 per engine. Based on these figures, the total cost impact of the proposed AD on US operators is estimated to be $1,814,400.

Regulatory Impact

This proposal does not have federalism implications, as defined in Executive Order No. 13132, because it would not have a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Accordingly, the FAA has not consulted with state authorities prior to publication of this proposal.

For the reasons discussed above, I certify that this proposed regulation (1) is not a ''significant regulatory action'' under Executive Order No. 12866; (2) is not a ''significant rule'' under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

Allison Engine Company: Docket No. 99–NE–47–AD.

Applicability: Allison Engine Company 250-C18 series and 250-C20 series turboshaft engines, installed on, but not limited to the following rotorcraft: AGUSTA Models A109, A109A, A109AII, A109C; Bell Helicopter Textron Models 47, 206, 206A, 206B, 206L, 206L–1, 206L–4; Enstrom Helicopter Models TH–28, 480; Eurocopter Canada Limited Model BO 105 LS A–3; Eurocopter France Models AS355E, AS355F, AS355F1, AS355F2; Eurocopter Deutschland Models BO–105A, BO–105C, BO–105S, BO–105LS A–1; Hiller Aviation Model FH–1100; McDonnell Douglas Helicopter Company Models 369D, 369E, 369F, 369H, 369HM, 369HS, 369HE, 369FF, 500N; Rogerson Hiller Corp. Model UH–12E; Schweizer Aircraft Corporation Model 269D.

Note 1: This airworthiness directive (AD) applies to each engine identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For engines that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (f) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To prevent in-flight engine shutdown due to blockage of the fuel nozzle screen, which can result in autorotation and forced landing, accomplish the following:

One-Time Inspection

(a) At the next scheduled 300-hour inspection, or 300 hours time-in-service (TIS) after the effective date of this AD, whichever occurs first, visually inspect the fuel nozzle screen for contamination.

Fuel Nozzle Screen Replacement

(b) If the fuel nozzle screen is contaminated, prior to further flight replace the fuel nozzle screen with a serviceable screen.

Fuel System Inspection and Repair

(c) If the fuel nozzle screen is contaminated, prior to further flight visually inspect and clean the following engine components:

(1) Fuel pump filter.
(2) Gas Producer fuel control inlet filter.
(3) Fuel control unit.
(4) Governor Filter.
(5) High pressure fuel filter, if applicable.

(d) If the fuel nozzle screen is contaminated, prior to further flight visually inspect and clean the aircraft fuel system.

Reporting Requirement

(e) Within 5 calendar days of the inspection performed in accordance with paragraph (a) of this AD, report the results of the inspection to John Tallarovic, Aerospace Engineer, Chicago Aircraft Certification Office, at 2300 E. Devon Ave., Des Plaines, IL 60018; telephone 847–294–8180, fax 847–294–7834, Internet john.m.tallarovic@faa.gov. Reporting requirements have been approved by the Office of Management and Budget and assigned OMB Control Number 2120–0056.

Alternative Methods of Compliance

(f) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Chicago Aircraft Certification Office. Operators shall submit their request through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Chicago Aircraft Certification Office.

Note 2: Information concerning the existence of approved alternative methods of compliance with this airworthiness directive, if any, may be obtained from the Chicago Aircraft Certification Office.

Ferry Flights

(g) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the rotorcraft to a location where the requirements of this AD can be accomplished.

Issued in Burlington, Massachusetts, on April 18, 2000.

Ronald L. Vavruska,

Acting Manager, Engine and Propeller Directorate, Aircraft Certification Service.

[FR Doc. 00–10291 Filed 4–24–00; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 00–AWA–2]

RIN 2120–AA66

Proposed Revision to the Legal Description of the Shaw Air Force Base Class C Airspace Area; SC

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: The FAA proposes to revise the legal description of the Shaw Air Force Base (AFB), SC, Class C airspace area by changing the hours of area operation to be consistent with current operational requirements. In this proposed revision, the Class C airspace area would be designated effective during the specific days and hours of operation of the Shaw AFB Airport Traffic Control Tower (ATCT) as established in advance by a Notice to

Airmen (NOTAM). The effective days and times would thereafter be continuously published in the Airport/Facility Directory. This proposed action would not change the actual dimensions, configuration, or operating requirements of the Shaw AFB Class C airspace area.

DATES: Comments must be received on or before June 8, 2000.

ADDRESSES: Send comments on the proposal in triplicate to the Federal Aviation Administration, Office of the Chief Counsel, Attention: Rules Docket, AGC–200, Airspace Docket No. 00–AWA–2, 800 Independence Avenue, SW., Washington, DC 20591. Comments may also be sent electronically to the following Internet address: nprmcmts@mail.hq.faa.gov. The official docket may be examined in the Rules Docket, Office of the Chief Counsel, Room 916, weekdays, except Federal holidays, between 8:30 a.m. and 5:00 p.m. An informal docket may also be examined during normal business hours at the office of the Regional Air Traffic Division.

FOR FURTHER INFORMATION CONTACT: Paul Gallant, Airspace and Rules Division, ATA–400, Office of Air Traffic Airspace Management, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone: (202) 267–8783.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal. Communications should identify the airspace docket number and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this action must submit with those comments a self-addressed, stamped postcard on which the following statement is made: ''Comments to Airspace Docket No. 00–AWA–2.'' The postcard will be date/time stamped and returned to the commenter. All communications received on or before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this action may be changed in light of comments received. All comments submitted will be available for examination in the Rules Docket both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRM's

An electronic copy of this document may be downloaded from the FAA regulations section of the Fedworld electronic bulletin board service (telephone: 703–321–3339) or the **Federal Register**'s electronic bulletin board service (telephone: 202–512–1661), using a modem and suitable communications software.

Internet users may reach the FAA's web page at http://www.faa.gov or the **Federal Register**'s web page at http://www.access.gpo.gov/nara for access to recently published rulemaking documents.

Any person may obtain a copy of this NPRM by submitting a request to the Federal Aviation Administration, Office of Air Traffic Airspace Management, Attention: Airspace and Rules Division, ATA–400, 800 Independence Avenue, SW., Washington, DC 20591, or by calling (202) 267–3075. Communications must identify the docket number of this NPRM. Persons interested in being placed on a mailing list for future NPRM's should contact the Federal Aviation Administration, Office of Rulemaking, (202) 267–9677, to request a copy of Advisory Circular No. 11–2A, which describes the application procedure.

Background

The Shaw AFB ATCT has reduced its hours of operation. Therefore, there is a need to revise the effective times published for the Shaw AFB Class C airspace area to coincide with those times that Class C air traffic control services are available. The Shaw AFB Class C airspace area remains an essential safety measure in support of the ongoing airport operational requirements.

The Proposal

The FAA proposes to amend 14 CFR part 71 by revising the legal description of the Shaw AFB Class C airspace area located at Shaw AFB, SC. The FAA proposes to revise the hours of operation for the Class C airspace area to align them with current airfield operations. It is proposed that the Shaw AFB Class C airspace area would be designated effective during the specific days and hours of operation of the Shaw AFB ATCT as established in advance by NOTAM. The proposed action is a technical amendment to the legal description and would not change the actual dimensions, configuration, or operating requirements of the Shaw AFB Class C airspace area. During the times that Shaw ATCT is not operational, the airspace reverts to Class E airspace since one of the requirements for Class C airspace is an operational ATCT. The radar approach control operating hours remain unchanged. Jacksonville Center assumes the airspace when Shaw radar approach control closes.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. Therefore, this proposed action: (1) Is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this proposed rule, when promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

The coordinates for this airspace docket are based on North American Datum 83. Class C airspace designations are published in paragraph 4000 of FAA Order 7400.9G, dated September 1, 1999, and effective September 16, 1999, which is incorporated by reference in 14 CFR 71.1. The Class C airspace designation listed in this document would be published subsequently in the Order.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

The Proposed Amendment

In consideration of the foregoing, the Federal Aviation Administration proposes to amend 14 CFR part 71 as follows:

PART 71—DESIGNATION OF CLASS A, CLASS B, CLASS C, CLASS D, AND CLASS E AIRSPACE AREAS; AIRWAYS; ROUTES; AND REPORTING POINTS

1. The authority citation for part 71 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389.

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation Administration Order 7400.9G, Airspace Designations and Reporting Points, dated September 1, 1999, and effective September 16, 1999, is amended as follows:

Paragraph 4000—Subpart C—Class C Airspace

* * * * *

Shaw AFB, SC [Revised]

Shaw AFB, SC
(lat. 33°58′23″ N., long. 80°28′22″ W.)
Sumter Municipal Airport
(lat. 33°59′42″ N., long. 80°21′40″ W.)

That airspace extending upward from the surface to and including 4,200 feet MSL within a 5-mile radius of the Shaw AFB, excluding that airspace below 1,500 feet MSL within a 2-mile radius of the Sumter Municipal Airport; and that airspace extending upward from 1,500 feet MSL to and including 4,200 feet MSL within a 10-mile radius of Shaw AFB; excluding that airspace contained within Restricted Area R–6002 when it is in use. This Class C airspace area is effective during the specific dates and times established in advance by a Notice to Airmen. The effective date and time will thereafter be continuously published in the Airport/Facility Directory.

* * * * *

Issued in Washington, DC, on April 17, 2000.

Reginald C. Matthews,

Manager, Airspace and Rules Division.

[FR Doc. 00–10214 Filed 4–24–00; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 00–AGL–11]

Proposed Modification of Class E Airspace; Shelbyville, IN

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This action proposes to modify Class E airspace at Shelbyville, IN. An Area Navigation (RNAV) Standard Instrument Approach Procedure (SIAP) to Runway (Rwy) 01, Amendment (Amdt) 1, and an RNAV SIAP to Rwy 19, Amdt 1, have been developed by Shelbyville Municipal Airport. Controlled airspace extending upward from 700 feet or more above the surface of the earth is needed to contain aircraft executing these approaches. This action would realign the existing Class E airspace to the northwest by 0.3 nautical miles (NM) for Shelbyville Municipal Airport.

DATES: Comments must be received on or before June 5, 2000.

ADDRESSES: Send comments on the proposal in triplicate to: Federal Aviation Administration, Office of the Regional Counsel, AGL–7 Rules Docket No. 00–AGL–11, 2300 East Devon Avenue, Des Plaines, Illinois 60018.

The official docket may be examined in the Office of the Regional Counsel, Federal Aviation Administration, 2300 East Devon Avenue, Des Plaines, Illinois. An informal docket may also be examined during normal business hours at the Air Traffic Division, Airspace Branch, with this rulemaking will be filed in the docket. Federal Aviation Administration, 2300 East Devon Avenue, Des Plaines, Illinois.

FOR FURTHER INFORMATION CONTACT: Denis C. Burke, Air Traffic Division, Airspace Branch, AGL–520, Federal Aviation Administration, 2300 East Devon Avenue, Des Plaines, Illinois 60018, telephone (847) 294–7568.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic environmental, and energy-related aspects of the proposals. Communications should identify the airspace docket number and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this action must submit with those comments a self-addressed, stamped postcard on which the following statement is made: ''Comments to Airspace Docket No. 00–AGL–11.'' The postcard will be date/time stamped and returned to the commenter. All communications received on or before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this action may be changed in light of comments received. All comments submitted will be available for examination in the Rule Docket, FAA, Great Lakes Region, Office of the Regional Counsel, 2300 East Devon Avenue, Des Plaines, Illinois, both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned

Availability of NPRM's

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the Federal Aviation Administration, Office of Public Affairs, Attention: Public Inquiry Center, APA–230, 800 Independence Avenue, S.W., Washington, DC 20591, or by calling (202) 267–3484. Communications must identify the docket number of this NPRM. Persons interested in being placed on a mailing list for future NPRM's should also request a copy of Advisory Circular No. 11–2A, which describes the application procedure.

The Proposal

The FAA is considering an amendment to 14 CFR part 71 to modify Class E airspace at Shelbyville, IN, by realigning the existing Class E airspace to the northwest by 0.3 NM for Shelbyville Municipal Airport. Controlled airspace extending upward from 700 feet or more above the surface of the earth is needed to contain aircraft executing instrument approach procedures. The area would be depicted on appropriate aeronautical charts. Class E airspace areas extending upward from 700 feet or more above the surface of the earth are published in paragraph 6005 of FAA Order 7400.9G dated September 1, 1999, and effective September 16, 1999, which is incorporated by reference in 14 CFR 71.1. The Class E designations listed in this document would be published subsequently in the Order.

The FAA has determined that this proposed regulation only involves an establishment body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. Therefore this, proposed regulation—(1) is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a Regulatory Evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this proposed rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR part 71

Airspace, Incorporation by reference, Navigation (air).

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me, the Federal Aviation Administration proposes to amend 14 CFR part 71 as follows:

PART 71—DESIGNATION OF CLASS A, CLASS B, CLASS C, CLASS D, AND CLASS E AIRSPACE AREAS; AIRWAYS; ROUTES; AND REPORTING POINTS

1. The authority citation for part 71 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389.

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation Administration Order 7400.9G, Airspace Designations and Reporting Points, dated September 1, 1999, and effective September 16, 1999, is amended as follows:

* * * * *

Paragraph 6005 Class E airspace areas extending upward from 700 feet or more above the surface of the earth.

* * * * *

AGL IN E5 Shelbyville, IN [Revised]

Shelbyvile Municipal Airport, IN
(lat. 39°34′59″ N., long 85°48′17″ W.)
Shelbyville VORTAC
(lat. 39°37′57″ N., long. 85°49′28″ W.)

That airspace extending upward from 700 feet above the surface within a 6.7-mile radius of the Shelbyville Municipal Airport, and within 1.8 miles each side of the Shelbyville VORTAC 340° radial, extending from the 6.7-mile radius to 9.6 miles northwest of the VORTAC, excluding that airspace within the Mount Comfort, IN, Class E airspace area.

* * * * *

Issued in Des Plaines, Illinois on April 6, 2000.

David B. Johnson,

Acting Manager, Air Traffic Division.

[FR Doc. 00–10216 Filed 4–24–00; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 00–AGL–12]

Proposed Establishment of Class E Airspace; Greenwood/Wonder Lake, IL

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This action proposes to establish Class E airspace at Greenwood/Wonder Lake, IL. An Area Navigation-A (RNAV–A) Standard Instrument Approach Procedure (SIAP), has been developed for Galt Field Airport. Controlled airspace extending upward from 700 feet or more above the surface of the earth is needed to contain aircraft executing these approaches. This action would create controlled airspace with an 8.8-mile radius for Galt Field Airport.

DATES: Comments must be received on or before June 5, 2000.

ADDRESSES: Send comments on the proposal in triplicate to: Federal Aviation Administration, Office of the Regional Counsel, AGL–7, Rules Docket No. 00–AGL–12, 2300 East Devon Avenue, Des Plaines, Illinois 60018.

The official docket may be examined in the Office of the Regional Counsel, Federal Aviation Administration, 2300 East Devon Avenue, Des Plaines, Illinois. An informal docket may also be examined during normal business hours at the Air Traffic Division, Airspace Branch, Federal Aviation Administration, 2300 East Devon Avenue, Des Plaines, Illinois.

FOR FURTHER INFORMATION CONTACT: Denis C. Burke, Air Traffic Division, Airspace Branch, AGL–520, Federal Aviation Administration, 2300 East Devon Avenue, Des Plaines, Illinois 60018, telephone (847) 294–7568.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal. Communications should identify the airspace docket number and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this action must submit with those comments a self-addressed, stamped postcard on which the following statement is made: ''Comments to Airspace Docket No. 00–AGL–12.'' The postcard will be date/time stamped and returned to the commenter. All communications received on or before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this action may be changed in light of comments received. All comments submitted will be available for examination in the Rules Docket, FAA, Great Lakes Region, Office of the Regional Counsel, 2300 East Devon Avenue, Des Plaines, Illinois, both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRM's

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the Federal Aviation Administration, Office of Public Affairs, Attention: Public Inquiry Center, APA–230, 800 Independence Avenue, S.W., Washington, DC 20591, or by calling (202) 267–3484. Communications must identify the docket number of this NPRM. Persons interested in being placed on a mailing list for future NPRM's should also request a copy of Advisory Circular No. 11–2A, which describes the application procedure.

The Proposal

The FAA is considering an amendment to 14 CFR part 71 to establish Class E airspace at Greenwood/Wonder Lake, IL, for Galt Field Airport. Controlled airspace extending upward from 700 feet or more above the surface of the earth is needed to contain aircraft executing instrument approach procedures. The area would be depicted on appropriate aeronautical charts. Class E airspace areas extending upward from 700 feet or more above the surface of the earth are published in paragraph 6005 of FAA Order 7400.9G dated September 1, 1999, and effective September 16, 1999, which is incorporated by reference in 14 CFR 71.1. The Class E designations listed in this document would be published subsequently in the Order.

The FAA has determined that this proposed regulation only involves an

establishment body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. Therefore this, proposed regulation—(1) is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a Regulatory Evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this proposed rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR part 71

Airspace, Incorporation by reference, Navigation (air).

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me, the Federal Aviation Administration proposes to amend 14 CFR part 71 as follows:

PART 71—DESIGNATION OF CLASS A, CLASS B, CLASS C, CLASS D, AND CLASS E AIRSPACE AREAS; AIRWAYS; ROUTES; AND REPORTING POINTS

1. The authority citation for part 71 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389.

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation Administration Order 7400.9G, Airspace Designations and Reporting Points, dated September 1, 1999, and effective September 16, 1999, is amended as follows:

* * * * *

Paragraph 6005—Class E airspace areas extending upward from 700 feet or more above the surface of the earth.

* * * * *

AGL IL E5 Greenwood/Wonder Lake, IL [New]

Greenwood/Wonder Lake, Galt Field Airport, IL
(lat. 42°24′10″ N., long. 88°22′33″ W.)

That airspace extending upward from 700 feet above the surface within a 8.8-mile radius of the Galt Field Airport, excluding that airspace within the Chicago, IL, Class E airspace area.

* * * * *

Issued in Des Plaines, Illinois on April 6, 2000.

David B. Johnson,

Acting Manager, Air Traffic Division.

[FR Doc. 00–10217 Filed 4–24–00; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 00–AGL–13]

Proposed Modification of Class E Airspace; Ionia, MI

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This action proposes to modify Class E airspace at Ionia, MI. An Area Navigation (RNAV) Standard Instrument Approach Procedure (SIAP) to Runway 27 has been developed for Ionia County Airport. Controlled airspace extending upward from 700 feet or more above the surface of the earth is needed to contain aircraft executing these approaches. This action would increase the radius of the existing controlled airspace for Ionia County Airport.

DATES: Comments must be received on or before June 5, 2000.

ADDRESSES: Send comments on the proposal in triplicate to: Federal Aviation Administration, Office of the Regional Counsel, AGL–7, Rules Docket No. 00–AGL–13, 2300 East Devon Avenue, Des Plaines, Illinois 60018.

The official docket may be examined in the Office of the Regional Counsel, Federal Aviation Administration, 2300 East Devon Avenue, Des Plaines, Illinois. An informal docket may also be examined during normal business hours at the air Traffic Division, Airspace Branch, Federal Aviation Administration, 2300 East Devon Avenue, Des Plaines, Illinois.

FOR FURTHER INFORMATION CONTACT: Denis C. Burke, Air Traffic Division, Airspace Branch, AG–520, Federal Aviation Administration, 2300 East Devon Avenue, Des Plaines, Illinois 60018, telephone (847) 294–7568.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal. Communications should identify the airspace docket number and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this action must submit with those comments a self-addressed, stamped postcard on which the following statement is made: ''Comments to Airspace Docket No. 00–AGL–13.'' The postcard will be date/time stamped and returned to the commenter. All communications received on or before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this action may be changed in light of comments received. All comments submitted will be available for examination in the Rules Docket, FAA, Great Lakes Region, Office of the Regional Counsel, 2300 East Devon Avenue, Des Plaines, Illinois, both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRM's

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the Federal Aviation Administration, Office of Public Affairs, Attention: Public Inquiry Center, APA–230, 800 Independence Avenue, S.W., Washington, DC 20591, or by calling (202) 267–3484. Communications must identify the docket number of this NPRM. Persons interested in being placed on a mailing list for future NPRM's should also request a copy of Advisory Circular No. 11–2A, which describes the application procedure.

The Proposal

The FAA is considering an amendment to 14 CFR part 71 to modify Class E airspace at Ionia, MI, for Ionia County Airport. Controlled airspace extending upward from 700 feet or more above the surface of the earth is needed to contain aircraft executing instrument approach procedures. The area would be depicted on appropriate aeronautical charts. Class E airspace areas extending upward from 700 feet or more above the surface of the earth are published in paragraph 6005 of FAA Order 7400.9G dated September 1, 1999, and effective

September 16, 1999, which is incorporated by reference in 14 CFR 71.1. The Class E designations listed in this document would be published subsequently in the Order.

The FAA has determined that this proposed regulation only involves an establishment body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. Therefore this, proposed regulation—(1) is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a Regulatory Evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this proposed rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR part 71

Airspace, Incorporation by reference, Navigation (air).

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me, the Federal Aviation Administration proposes to amend 14 CFR part 71 as follows:

PART 71—DESIGNATION OF CLASS A, CLASS B, CLASS C, CLASS D, AND CLASS E AIRSPACE AREAS; AIRWAYS; ROUTES; AND REPORTING POINTS

1. The authority citation for part 71 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389.

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation Administration Order 7400.9G, Airspace Designations and Reporting Points, dated September 1, 1999, and effective September 16, 1999, is amended as follows:

* * * * *

Paragraph 6005—Class E airspace areas extending upward from 700 feet or more above the surface of the earth.

* * * * *

AGL MI E5 Ionia, MI [Revised]

Ionia County Airport, MI
(lat. 42°56′16″ N., long. 85°03′40″ W.)

That airspace extending upward from 700 feet above the surface within a 7.4-mile radius of the Ionia County Airport.

* * * * *

Issued in Des Plaines, Illinois on April 6, 2000.

David B. Johnson,

Acting Manager, Air Traffic Division.

[FR Doc. 00–10218 Filed 4–24–00; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 73

[Airspace Docket No. 99–ANM–16]

Proposed Restricted Area, ID

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This action proposes to establish Restricted Area 3203D (R–3203D) at Orchard, ID. The Idaho Army National Guard has requested that this restricted area be established to support its annual training requirements. This restricted area would be established adjacent to the existing R–3203A and be used a maximum of three weeks annually.

DATES: Comments must be received on or before June 9, 2000.

ADDRESSES: Send comments on the proposal in triplicate to: Manager, Air Traffic Division, ANM–500, Docket No. 99–ANM–16, Federal Aviation Administration, 1601 Lind Avenue, SW., Renton, WA 98055–4056.

The official docket may be examined in the Rules Docket, Office of the Chief Counsel, Room 916, 800 Independence Avenue, SW., Washington, DC, weekdays, except Federal holidays, between 8:30 a.m. and 5:00 p.m.

An informal docket may also be examined during normal business hours at the office of the Regional Air Traffic Division, Federal Aviation Administration.

FOR FURTHER INFORMATION CONTACT: Ken McElroy, Airspace and Rules Division, ATA–400, Office of Air Traffic Airspace Management, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone: (202) 267–8783.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal. Communications should identify the airspace docket number and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this action must submit with those comments a self-addressed, stamped postcard on which the following statement is made: ''Comments to Airspace Docket No. 99–ANM–16.'' The postcard will be date/time stamped and returned to the commenter. Send comments on environmental and land-use aspects to: The State of Idaho, Military Division, Headquarters Idaho Army National Guard, Boise Air Terminal, 4040 W. Guard Street, Bosie, ID 83705–8048. All communications received on or before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this action may be changed in light of comments received. All comments submitted will be available for examination in the Rules Docket both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRM's

An electronic copy of this document may be downloaded, using a modem and suitable Communications software, from the FAA regulations section of the Fedworld electronic bulletin board service (telephone: 703–321–3339) or the **Federal Register**'s electronic bulletin board service (telephone: 202–512–1661).

Internet users may reach the FAA's web page at http://www.faa.gov or the Superintendent of Document's web page at http://www.access.gpo. gov/nara for access to recently published rulemaking documents.

Any person may obtain a copy of this NPRM by submitting a request to the Federal Aviation Administration, Office of Air Traffic Airspace Management, ATA–400, 800 Independence Avenue, SW., Washington, DC 20591, or by calling (202) 267–8783. Communications must identify the docket number of the NPRM. Persons interested in being placed on a mailing list for future NPRM's should call the

FAA's Office of Rulemaking, (202) 267–9677, for a copy of Advisory Circular No. 11–2A, Notice of Proposed Rulemaking Distribution System, which describes the application procedure.

The Proposal

The FAA is proposing an amendment to 14 CFR part 73 (part 73) to establish R–3203D, Orchard, ID, adjacent to the existing R–3203A, to assist the Idaho Army National Guard's annual training. The proposed restricted area would be effective for a period of time not exceeding three weeks annually. Expansion in the number of gun batteries assigned to field artillery units, along with requirements that each assigned battery accomplish several moves per day to different firing points, has created the need to expand the available restricted airspace, for a period of time each year, to provide for more effective annual training tests. All artillery firing would be directed into existing impact areas located approximately in the center of R–3203A. The restricted area is needed to provide protected airspace to contain projectiles during flight between the surface firing point and entry into the existing restricted area.

The proposed restricted area would be utilized for a period of time not exceeding three weeks per year by the Idaho Army National Guard Field Artillery and would be released to the FAA for public use during the periods when it is not required for military training.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. Therefore, this proposed regulation: (1) is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this proposed rule, when promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

The coordinates for this airspace docket are based on North American Datum 83. Section 73.32 of part 73 of the Federal Aviation Regulations was republished in FAA Order 7400.8G dated September 1, 1999.

Environmental Review

This proposal will be subject to environmental review prior to any FAA final regulatory action.

List of Subjects in 14 CFR Part 73

Airspace, Incorporation by reference, Navigation (air).

The Proposed Amendment

In consideration of the foregoing, the Federal Aviation Administration proposes to amend 14 CFR part 73 as follows:

PART 73—SPECIAL USE AIRSPACE

1. The authority citation for part 73 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389.

§ 73.32 [Amended]

2. Section 73.32 is amended as follows:

* * * * *

R–3203D Orchard Training Area, ID [New]

Boundaries. Beginning at lat. 43°14′00″ N., long. 116°16′30″ W.; at lat. 43°17′51″ N., long. 116°16′25″ W.; at lat. 43°19′02″ N., long. 116°14′45″ W.; at lat. 43°19′02″ N., long. 116°06′36″ W.; at lat. 43°15′58″ N., long. 116°01′12″ W.; at lat. 43°15′00″ N., long. 116°01′00″ W.; at lat. 43°17′00″ N., long. 116°05′00″ W.; at lat. 43°17′00″ N., long. 116°12′00″ W.; to point of beginning.

Designated altitudes. Surface to and including 22,000 feet MSL.

Times of use. As scheduled by NOTAM 24 hours in advance not to exceed three weeks annually.

Controlling agency. FAA Boise ATCT.

Using agency. Commanding General Idaho Army National Guard.

* * * * *

Issued in Washington, DC, on April 14, 2000.

Reginald C. Matthews,

Manager, Airspace and Rules Division.

[FR Doc. 00–10215 Filed 4–24–00; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 73

[Airspace Docket No. 99–ANM–15]

Proposed Reconfiguration, Revision, and Establishment of Restricted Areas; ID

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This action proposes to reconfigure Restricted Area 3202A (R–3202A), Saylor Creek, ID by establishing a High area from FL 180 to FL 290 and a Low area from the surface to, but not including, FL 180 within the existing R–3202A, and to revoke Restricted Areas 3202B and C (R–3202B and R–3202C). Additionally, this action proposes to establish three new Restricted Areas (R–3204A, B, and C) at Juniper Butte, ID. The FAA is proposing these efforts to support the United States Air Force (USAF) rapid-response air expeditionary wing training.

DATES: Comments must be received on or before June 9, 2000.

ADDRESSES: Send comments on the proposal in triplicate to: Manager, Air Traffic Division, ANM–500, Docket No. 99–ANM–15, Federal Aviation Administration, 1601 Lind Avenue, SW., Renton, WA 98055–4056.

The official docket may be examined in the Rules Docket, Office of the Chief Counsel, Room 916, 800 Independence Avenue, SW., Washington, DC, weekdays, except Federal holidays, between 8:30 a.m. and 5:00 p.m.

An informal docket may also be examined during normal business hours at the office of the Regional Air Traffic Division.

FOR FURTHER INFORMATION CONTACT: Ken McElroy, Airspace and Rules Division, ATA–400, Office of Air Traffic Airspace Management, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone: (202) 267–8783.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal. Communications should identify the airspace docket number and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: ''Comments to Airspace Docket No. 99–ANM–15.'' The postcard will be date/time stamped and returned to the

commenter. Send comments on environmental and land-use aspects to: Headquarters ACC/DOR Air Combat Command Airspace and Range Management Division, 205 Dodd Blvd, Ste 101, Langley AFB, VA 23665–2789. All communications received on or before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in light of comments received. All comments submitted will be available for examination in the Rules Docket both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRM's

An electronic copy of this document may be downloaded, using a modem and suitable communications software, from the FAA regulations section of the Fedworld electronic bulletin board service (telephone: 703–321–3339) or the **Federal Register**'s electronic bulletin board service (telephone: 202–512–1661).

Internet users may reach the FAA's web page at http://www.faa.gov or the Superintendent of Document's web page at http://www.access.gpo.gov/nara for access to recently published rulemaking documents.

Any person may obtain a copy of this NPRM by submitting a request to the Federal Aviation Administration, Office of Air Traffic Airspace Management, ATA–400, 800 Independence Avenue, SW., Washington, DC 20591, or by calling (202) 267–8783. Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for future NPRM's should call the FAA's Office of Rulemaking, (202) 267–9677, for a copy of Advisory Circular No. 11–2A, Notice of Proposed Rulemaking Distribution System, which describes the application procedure.

The Proposal

The FAA is proposing an amendment to 14 CFR part 73 (part 73) that would reconfigure R–3202A, Saylor Creek, ID by establishing a High area from FL 180 to FL 290 and a Low area from the surface to, but not including, FL 180 within the existing R–3202A, and revoke R–3202B and R–3202C. In addition, this action proposes to establish three new Restricted Areas (R–3204A, from the surface to 100 feet AGL; R–3204B, from 100 feet to, but not including, FL 180; and R–3204C, from FL 180 to FL 290) at Juniper, Butte, ID. The proposed restricted airspace for the Juniper Butte range would be established over 12,000-acres with one 300-acre impact area at the approximate center of the area. The proposed restricted airspace would permit the safe delivery of training ordinances into the proposed R–3204A impact area. This proposal eliminates restricted airspace south of the existing Saylor Creek Range and would result in an overall reduction of restricted airspace. The FAA is proposing these efforts to support the USAF rapid-response air expeditionary wing training.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. Therefore, this proposed regulation: (1) Is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this proposed rule, when promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

The coordinates for this airspace Docket are based on North American Datum 83. Section 73.32 of part 73 of the Federal Aviation Regulations was republished in FAA Order 7400.8G dated September 1, 1999.

Environmental Review

This proposal will be subject to environmental review prior to any FAA final regulatory action.

List of Subjects in 14 CFR Part 73

Airspace, Incorporation by reference, Navigation (air).

The Proposed Amendment

In consideration of the foregoing, the Federal Aviation Administration proposes to amend 14 CFR part 73 as follows:

PART 73—Special Use Airspace

1. The authority citation for 14 CFR part 73 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389.

§ 73.32 [Amended]

2. Section 73.32 is amended as follows:

* * * * *

R–3202A Saylor Creek, ID [Revoke]
R–3202B Saylor Creek, ID [Revoke]
R–3202C Saylor Creek, ID [Revoke]
R–3202 Saylor Creek Low, ID [New]

Boundaries: Beginning at lat. 42°53′00″ N., long. 115°42′20′ W.;
at lat. 42°53′00″ N., long. 115°24′15″ W.;
at lat. 42°36′00″ N., long. 115°24′15″ W.;
at lat. 42°36′00″ N., long. 115°42′20″ W.; to point of beginning.
Designated altitudes: Surface to, but not including, FL 180.
Times of use: 0730–2200 local time, Monday through Friday, other times by NOTAM.
Controlling agency: FAA Salt Lake City, ARTCC.
Using agency: USAF, 366th Wing, Mountain Home AFB, ID.

R–3202 Saylor Creek High, ID [New]

Boundaries: Beginning at lat. 42°53′00″ N., long. 115°42′20″ W.;
at lat. 42°53′00″ N., long. 115°24′15″ W.;
at lat. 42°36′00″ N., long. 115°24′15″ W.;
at lat. 42°36′00″ N., long. 115°42′20″ W.; to point of beginning.
Designated altitudes: FL 180 to FL 290.
Times of use: 0730–2200 local time, Monday through Friday, other times by NOTAM.
Controlling agency: FAA Salt Lake City, ARTCC.
Using agency: USAF, 366th Wing, Mountain Home AFB, ID.

R–3204A Juniper Buttes, ID [New]

Boundaries: Beginning at lat. 42°20′00″ N., long. 115°22′30″ W.;
at lat. 42°20′00″ N., long. 115°18′00″ W.;
at lat. 42°19′00″ N., long. 115°17′00″ W.;
at lat. 42°16′35″ N., long. 115°17′00″ W.;
at lat. 42°16′35″ N., long. 115°22′30″ W.; to point of beginning.
Designated altitudes: Surface to 100 feet AGL.
Times of use: 0730–2200 local time, Monday through Friday, other times by NOTAM.
Controlling agency: FAA Salt Lake City, ARTCC.
Using agency: USAF, 366th Wing, Mountain Home AFB, ID.

R–3204B Juniper Buttes, ID [New]

Boundaries: The airspace within a 5 NM radius centered on lat.42°18′00″ N., long. 115°20′00″ W.
Designated altitudes: 100 feet AGL to, but not including, FL 180.
Times of use: 0730–2200 local time, Monday through Friday, other times by NOTAM.
Controlling agency: FAA Salt Lake City, ARTCC.
Using agency: USAF, 366th Wing, Mountain Home AFB, ID.

R–3204C Juniper Buttes, ID [New]

Boundaries: The airspace within a 5 NM radius centered on lat.42°18′00″ N., long. 115°20′00″ W.
Designated altitudes: FL 180 to FL 290.
Times of use: 0730–2200 local time, Monday through Friday, other times by NOTAM.
Controlling agency: FAA Salt Lake City, ARTCC.

Using agency: USAF, 366th Wing, Mountain Home AFB, ID.

* * * * *

Issued in Washington, DC, on April 19, 2000.

Reginald C. Matthews,

Manager, Airspace and Rules Division.

[FR Doc. 00–10243 Filed 4–24–00; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 821

[Docket No. 00N–1034]

Medical Devices; Device Tracking

AGENCY: Food and Drug Administration, HHS.

ACTION: Proposed rule.

SUMMARY: The Food and Drug Administration (FDA) is proposing to amend the medical device tracking regulations. The scope of the regulation and certain patient confidentiality requirements must be amended to conform to changes made in section 519(e) of the Federal Food, Drug, and Cosmetic Act (the act) by the FDA Modernization Act of 1997 (FDAMA). FDA also proposes nonsubstantive revisions to remove outdated references or simplify terminology.

DATES: Submit written comments by July 24, 2000. See section IV of this document for the proposed effective date of a final rule based on this document. Submit written comments on the information collection requirements by May 25, 2000.

ADDRESSES: Submit written comments on the proposed rule to the Dockets Management Branch (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852. Submit written comments regarding the information collection requirements to the Office of Information and Regulatory Affairs Office of Management and Budget (OMB), New Executive Office Bldg., 725 17th St. NW., rm. 10235, Washington, DC 20503, Attn: Desk Officer for FDA.

FOR FURTHER INFORMATION CONTACT: Chester T. Reynolds, Center for Devices and Radiological Health (HFZ–300), Food and Drug Administration, 2094 Gaither Rd., Rockville, MD 20850, 301–594–4618.

SUPPLEMENTARY INFORMATION:

I. Background

A. The SMDA and Device Tracking Regulations

The Safe Medical Device Act of 1990 (the SMDA) (Public Law 101–629) became law on November 28, 1990. It added mandatory and discretionary device tracking provisions to the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 301 *et seq.*) under new section 519(e) (21 U.S.C. 360i(e)).

As added by the SMDA, new section 519(e)(1) mandated the adoption of a method of tracking by any person registered under section 510 of the act (21 U.S.C. 360) and engaged in the manufacture of a device if its failure would be reasonably likely to have serious adverse health consequences and the device was either a permanently implantable device or a life-sustaining or life-supporting device used outside a device user facility. New section 519(e)(2) authorized FDA, in its discretion, to ''designate'' other devices that must be tracked, to protect the public health and safety.

On August 16, 1993, FDA published in the **Federal Register** (58 FR 43442) the final rule setting forth regulations governing the tracking of medical devices, as provided by the SMDA under sections 519(e)(1) and (e)(2) of the act. Elsewhere in the same **Federal Register** (58 FR 43451), FDA published a rule amending the illustrative list of those devices FDA considered subject to tracking under the mandatory criteria under section 519(e)(1) and the list of devices FDA designated as subject to tracking under section 519(e)(2). The final tracking regulations for medical devices, including the amended lists of tracked devices, went into effect on August 29, 1993, and are currently codified in part 821 of title 21 of the Code of Federal Regulations (21 CFR part 821).

B. FDAMA Tracking Provisions

FDAMA (Public Law 105–115) was enacted on November 21, 1997. Section 211 of FDAMA amended the tracking provision in section 519(e)(1) of the act and became effective on February 19, 1998. Unlike the tracking provisions under the SMDA, which required tracking for any device meeting certain criteria, FDAMA allows FDA discretion in applying tracking requirements and provides that tracking requirements can be imposed only after issuance of an order.

FDAMA authorizes FDA to issue orders that require a manufacturer to adopt a method of tracking a class II or class III device if its failure would be reasonably likely to have serious adverse health consequences, or it is intended to be implanted in the human body for more than 1 year, or it is a life-sustaining or life-supporting device used outside a device user facility. As amended by FDAMA, section 519(e)(2) of the act provides that patients receiving a device subject to tracking may refuse to release, or refuse permission to release, their names, addresses, social security numbers, or other identifying information for tracking purposes.

Section 519(e) of the act, as amended by FDAMA, provides that FDA '' may by order require a manufacturer to adopt a method of tracking.'' Such an order specifies to the manufacturer the class II or class III device(s) to be tracked. FDA interprets the discretion inherent in ''may'' to allow the agency to consider additional relevant factors in determining whether to issue a tracking order for a device that meets the criteria in amended section 519(e)(1) of the act.

The discretionary authority to issue tracking orders, and the three statutory criteria that operate independently of one another in section 519(e)(1) of the act, allow the agency to accomplish the intended purpose of device tracking under FDAMA, as identified by Congress, i.e., to facilitate the recall of dangerous or defective devices, under section 518(e) of the act (S. Rept. 108, 105th Cong., 1st sess. 37 (1997)).

II. Implementation of FDAMA Tracking Authority

A. Public Meeting/Manufacturer Notification

On December 18, 1997, FDA published a **Federal Register** notice (62 FR 66373) announcing the agency's intention to hold a public meeting on January 15, 1997, in Rockville, MD to discuss changes in medical device tracking and postmarket surveillance authorities under FDAMA. In particular, the agency was interested in discussing whether it should consider additional nonbinding factors to supplement the statutory criteria, under FDAMA, in determining whether tracking requirements should be ordered by FDA.

On December 19, 1997, FDA sent letters to manufacturers having responsibilities to track devices under section 519(e) of the act. These letters advised that FDAMA would implement important statutory changes in medical device tracking, which had been authorized previously under the SMDA. The letters noted FDA's December 18, 1997, **Federal Register** notice announcing the public meeting it would conduct on January 15, 1998, to discuss

such changes. The letters also advised that existing device tracking requirements imposed by previously issued FDA regulations or FDA orders would remain in effect until FDA notified a firm of any changes in its responsibilities.

At the January 15, 1998, public meeting, written and oral comments were received from consumer groups, clinicians, manufacturers, and device industry associations. These comments addressed factors FDA should consider in requiring tracking and ranged from FDA consideration of clinical management issues, and the use of alternative tracking mechanisms, to consideration of the likelihood of device failure.

B. Issuance of New Tracking Orders

On February 11, 1998, FDA issued orders to manufacturers who would be required to track their devices under section 519(e) of the act, as revised by FDAMA. The orders were issued for 28 types of devices, which the agency determined met the revised tracking criteria under FDAMA. The orders became effective on February 19, 1998, the effective date of the revised tracking provision under FDAMA. The 28 devices subject to these new orders included the 26 device types previously identified as subject to tracking under the SMDA criteria in the agency's tracking regulation at § 821.20(b)(1), (b)(2), and (c). Two device types not previously listed as subject to tracking in the regulation, namely, arterial stents and intraocular lenses, were also the subject of new tracking orders under FDAMA.

In the **Federal Register** of March 4, 1998 (63 FR 10638), FDA published a notice identifying the 28 device types subject to the orders. The notice announced, again, FDA's intention to review and reconsider the imposition of tracking requirements for these devices, in light of its discretionary authority under FDAMA, to not require the tracking of devices that meet the statutory criteria. The notice also identified 13 devices that met the statutory criteria and that were subject to the February 1998 tracking orders, but that may be removed from the tracking requirement based on other factors. Comments were solicited on which nonbinding factors should be considered in making such discretionary tracking determinations.

C. Tracking Guidance Documents and FDA Reconsideration, Rescission, and Additional Issuance of Tracking Orders

In the March 4, 1998, **Federal Register**, FDA also published a notice of availability of the guidance document entitled ''Guidance on Medical Device Tracking'' (63 FR 10640). This document provided guidance to manufacturers and distributors about their tracking responsibilities under section 519(e) of the act, as amended by FDAMA. It discussed what statutory and regulatory requirements had changed, and what requirements remained the same, and represented FDA's current thinking on medical device tracking under the FDAMA amendments.

Beginning on August 26, 1998, FDA issued orders to manufacturers, rescinding the tracking orders it issued, effective February 19, 1998, for 14 types of devices manufactured by firms, including intraocular lenses and arterial stents. The agency determined, in its discretion, that these 14 device types did not warrant continued tracking based on the nonbinding factors, even though the statutory criteria were met. These nonbinding factors included: (a) The likelihood of sudden, catastrophic failure, (b) the likelihood of significant adverse clinical outcomes, and (c) the need for prompt professional intervention.

On December 14, 1998, FDA issued orders to manufacturers of dura mater devices, requiring them to track the devices under section 519(e) of the act, as amended by FDAMA. These medical devices met the statutory criteria and may have significant adverse clinical outcomes.

In the February 12, 1999, **Federal Register**, FDA published a notice of availability of the revised final guidance document entitled ''Guidance on Medical Device Tracking'' (64 FR 7197). It replaced the previous final guidance issued on March 4, 1998. The revised final guidance of February 12, 1999, stated the agency's current thinking on manufacturer and distributor tracking responsibilities, and explained statutory and regulatory requirements that either changed or remained unchanged under medical device tracking revisions made under FDAMA.

The guidance announced on February 12, 1999, provided an updated list of devices that were subject to tracking orders. It also provided the factors, such as the likelihood of sudden, catastrophic failure or significant, adverse clinical outcomes, or the need for prompt professional intervention, that FDA may use, in addition to the statutory criteria, in deciding whether to require the tracking of a device. It mentioned, as well, FDA's December 1998 issuance of tracking orders for dura mater devices.

On September 28, 1999, FDA issued orders to manufacturers of stent grafts intended to treat abdominal aortic aneurysms, requiring them to track the devices. Upon reviewing premarket applications, the agency determined these devices meet the statutory tracking criteria of amended section 519(e), because their failure would be reasonably likely to have serious adverse health effects. On January 24, 2000, FDA issued a revised ''Guidance on Medical Device Tracking'' that identifies abdominal aortic aneurysm stent grafts as tracked devices.

Agency experience indicates that industry and other interested parties were uncertain whether ''replacement heart valves'' subject to tracking include more than one type of heart valve. The January 24, 2000, revised guidance document clarified that the category of replacement heart valves that must be tracked is limited to mechanical heart valves only and does not include human allograft (tissue) heart valves.

There was similar uncertainty concerning which infusion pumps must be tracked. The February 1999 guidance document identified ''infusion pumps, except those designated and labeled for use exclusively for fluids with low potential risks, such as enteral feeding or anti-infectives,'' as types of pumps subject to tracking. This description caused difficulty because infusion pump labeling does not always make clear the types of fluids the pumps are intended to deliver. FDA reevaluated the tracking status of these devices and clarified, in its January 24, 2000, guidance that tracking is required only for electromechanical infusion pumps used outside device user facilities.

III. Proposed Changes in Tracking Regulation

On February 19, 1998, FDAMA amended section 519(e) of the act. By operation of statute, certain provisions in the tracking regulation, part 821, became inconsistent with the tracking requirements as revised by FDAMA. This proposed rule revises certain parts of part 821 to conform with section 519 of the act, as amended. FDA is proposing to revise the scope of the tracking requirements, including the appropriate modification of certain definitions and certain requirements relating to patient confidentiality, to reflect FDAMA's changes.

In addition to changes in the proposed regulation that would reflect the changes already implemented under FDAMA, FDA proposes to simplify the regulation in a few nonsubstantive areas. These include: Removing explicit references to effective dates of provisions that have been in effect since 1993 (§ 821.1(c)); removing references to

procedures for filing petitions before August 29, 1993 (§ 821.2(d)); and substituting the simple inclusive term, ''tracked devices,'' in referring to devices intended for single use or multiple use that are subject to tracking, in place of the specific terms, ''life-sustaining or life-supporting devices used outside device user facilities'' and ''permanent implants'' (§ 821.25(a)(2) and (a)(3)).

Other than the proposed changes described above, parts of the tracking regulation that were not affected by FDAMA remain unchanged. Except for the nonsubstantive terminology change noted above, there are no proposed revisions to: The regulation's system and content requirements of tracking; the obligations of persons other than device manufacturers, such as distributors; records and inspection requirements; and record retention requirements.

Each of the revisions proposed for amending the medical devices tracking regulation is discussed in more detail below.

1. FDA is proposing to amend § 821.1 *Scope*, by revising paragraph (a) to conform its language to the statutory language in section 519(e) of the act, as amended by FDAMA.

Previously, under the statutory tracking provisions of section 519(e)(1) of the act, as added by the SMDA, the scope of the tracking regulations in paragraph (a) applied the requirement to adopt a method of tracking to any person who registered under section 510 of the act as the manufacturer of a device, if the device's failure would be reasonably likely to have a serious adverse health consequence and if it was either a permanently implantable device or a life-sustaining or life-supporting device used outside a device user facility. The previous SMDA tracking provision in section 519(e)(2) also allowed the agency to require, in its discretion, tracking for any other device which did not otherwise meet the statutory tracking criteria in section 519(e)(1).

FDAMA has changed the scope of the tracking provisions in several ways, as follows:

a. The tracking provision in section 519(e) of the act does not require tracking even if the statutory criteria are met unless FDA issues an order that directs a manufacturer to track a device. Under the SMDA, devices that met the certain statutory criteria were subject to tracking automatically, even if FDA did not issue an order.

b. FDAMA allows FDA to exercise discretion in determining whether a device which meets the criteria in section 519(e) shall be tracked. SMDA did not allow FDA the discretion to excuse devices from tracking requirements if the devices met the statutory criteria.

c. Under FDAMA, the types of persons subject to tracking are no longer linked to registration requirements under section 510 of the act. As amended, the tracking provision requires manufacturers who are issued a FDA tracking order to track the device(s).

d. FDAMA also modifies the criteria by which devices may be subject to tracking. Formerly, under the SMDA's section 519(e)(1), tracked devices were those that ''the failure of which would be reasonably likely to have serious adverse health consequences and which is (A) a permanently implantable device, or (B) a sustaining or life supporting device used outside a device user facility * * *.''

Under revised section 519(e)(1) of FDAMA, FDA may order a manufacturer to track only a ''class II or class III device (A) the failure of which would be reasonably likely to have serious adverse health consequences; or (B) which is (i) intended to be implanted in the human body for more than 1 year, or (ii) a life sustaining or life supporting device used outside a device user facility.''

In addition, the agency may no longer designate a device as one that requires tracking to protect the public health, if the device does not meet any of the criteria for tracked devices in section 519(e) of the act. Former section 519(e)(2) under the SMDA allowed FDA discretion to order tracking for devices that did not meet statutory criteria.

FDA is proposing to revise the language in paragraph (a) of § 821.1 to conform to the amended statutory language in section 519(e) of the act. Under proposed § 821.1(a), the scope of the tracking regulation would reflect the revised statutory language in section 519(e)(1) to state tracking may only be required after certain statutory criteria are met.

2. FDA is proposing to revise the third sentence in paragraph (b) in § 821.1, which describes persons subject to tracking requirements, by removing the words, ''must register under section 510 of the act,'' and substituting the words, ''are subject to tracking orders.'' As noted above, this change reflects the revisions made to section 519(e) by FDAMA. The revised tracking requirements, as amended by FDAMA, are triggered for the manufacturer by the issuance of a FDA tracking order, not by registration requirements.

3. FDA is proposing to remove paragraph (c) from § 821.1 and to redesignate paragraphs (d) and (e) as paragraphs (c) and (d), respectively. Current § 821.1(c) was included in the final tracking regulations to clarify that the effective date for the tracking requirements under the SMDA was August 29, 1993. Because the requirements of these regulations have been in effect since August 29, 1993 and have been implemented by industry for more than 5 years, it is not necessary to include the effective date in the current regulation.

4. FDA proposes amending § 821.2 *Exemptions and variances*, by removing paragraph (d). Paragraph (d) refers to the procedures that FDA used to handle tracking petitions received prior to the August 29, 1993, effective date of the tracking regulation. Because all of those petitions have been responded to, there is no longer any need to include procedures relating to such petitions.

5. FDA is proposing to amend § 821.3 *Definitions*, by revising the definition of ''Importer'' in paragraph (b). ''Importer'' under the current regulation is defined as ''the initial distributor of an imported device who is required to register under section 510 of the act and § 807.20 of this chapter. 'Importer' does not include anyone who only performs a service for the person who furthers the marketing, i.e., brokers, jobbers, or warehouser.''

FDA is proposing to remove the current language, ''required to register under section 510 of the act and § 807.20 of this chapter,'' from the end of the first sentence in the definition and to replace it with the phrase, ''subject to a tracking order.'' FDA proposes that ''Importer'' be defined as ''the initial distributor of an imported device who is subject to a tracking order.'' The remainder of the definition would be unchanged.

As explained previously, FDAMA removed the requirement that persons subject to registration requirements were automatically required to track their devices if the devices met certain criteria. The revised definition of ''importer'' reflects that tracking requirements are no longer triggered by registration requirements and that FDA must issue an order to such persons before they can be subject to tracking requirements.

6. FDA is proposing to amend § 821.3 *Definitions*, by revising the definition of ''*Permanently implantable device*'' in paragraph (f). A '' permanently implantable device'' is currently defined as:

* * * a device that is intended to be placed into a surgically or naturally formed cavity of the human body to

continuously assist, restore, or replace the function of an organ system or structure of the human body throughout the useful life of the device. The term does not include any device which is intended and used only for temporary purposes or which is intended for explantation.

Under the statutory tracking criteria added by the SMDA, section 519(e)(1)(A) required the mandatory tracking of a ''permanently implantable device,'' if its failure was reasonably likely to have serious adverse health consequences. To implement this provision in the absence of further statutory clarification, FDA defined the meaning of ''permanently implantable device'' in § 821.3(f) to require such implants to ''continuously assist, restore, or replace the function of an organ system or structure of the human body'' throughout their useful life. Implanted devices intended for temporary use or explantation were not included in the meaning of the term.

The type of implanted device that may be subject to tracking under section 519(e), as amended by FDAMA, has changed and must exceed a minimum implantation time period. Under the statutory tracking criteria of FDAMA, amended section 519(e)(1)(B)(i) now provides that FDA may order the tracking of a class II or class III implanted device, only if the device ''is intended to be implanted in the human body for more than 1 year.''

FDA is proposing to revise the definition in § 821.3(f) as follows:

Device intended to be implanted in the human body for more than 1 year means a device that is intended to be placed into a surgically or naturally formed cavity of the human body for more than 1 year to continuously assist, restore, or replace the function of an organ system or structure of the human body throughout the useful life of the device. The term does not include any device which is intended and used only for temporary purposes or which is intended for explantation in 1 year or less.

FDA is proposing to change the type of implanted device defined under § 821.3(f) from ''permanently implantable device'' to ''device intended to be implanted in the human body for more than 1 year.'' This revision reflects the minimum implantation time period specified by FDAMA for the type of implanted device which FDA may order to be tracked under the revised statutory criteria of section 519(e). The agency is also proposing to add the phrase, ''for more than 1 year,'' in the first sentence of the revised definition after the phrase, ''of the human body.'' At the end of the second sentence, FDA is proposing to add the phrase, ''in 1 year or less.'' These latter two revisions further incorporate into the revised definition the minimum implantation time period effected by the FDAMA amendment.

FDA believes that devices implanted for more than 1 year must continue to perform the function for which they were designed and implanted, throughout their useful life. FDA continues to believe that implanted devices which may remain ''permanently'' in the body, but whose function may be replaced by natural or other processes after a given period of time, should not be tracked (57 FR 22973, May 29, 1992). Thus, FDA is proposing to retain the ''continuously assist, restore, or replace'' portion of the current definition as a condition of meeting the criterion in section 519(e)(1)(B)(i) of the act.

7. FDA is proposing to amend § 821.20 *Devices subject to tracking*, by revising paragraph (a) to conform to the tracking provision of section 519(e) of the act, as amended by FDAMA. Current paragraph (a) conforms to the tracking provision that was added to the act under section 519(e) by the SMDA. It required the tracking of devices that met the statutory tracking criteria for devices in section 519(e) and also required the tracking of devices that FDA, in its discretion, designated as requiring tracking.

Proposed paragraph (a) would conform to the statutory language of the revised section 519(e) under FDAMA. Accordingly, proposed § 821.20(a) would require the manufacturer of a class II or class III device to track the device when ordered by FDA to do so, under the agency's discretion, after making a determination that such a device is one the failure of which would be reasonably likely to have serious adverse health consequences, or is one which is intended to be implanted in the human body for more than a year, or is one which is life-sustaining or life-supporting and used outside a device user facility, and is one which warrants tracking.

8. FDA proposes the further revision of § 821.20 Devices subject to tracking, by the removal of paragraph (b), paragraph (b)(1) and the table in (b)(1), paragraph (b)(2) and the table in paragraph (b)(2), and paragraph (c) and the table in paragraph (c).

Under the SMDA tracking provision in previous section 519(e) of the act, the manufacturer of a device was required by statute to track the device if the device met the criteria set forth in section 519(e)(1). FDA was not required to issue an order for a device included in this section. It was the manufacturer's responsibility to track devices that met the statutory criteria. Under prior section 519(e)(2), the manufacturer was also required to track any device designated by FDA to require tracking. This section required FDA to issue an order.

Current paragraph (b) of § 821.20 sets out the responsibility of manufacturers to identify whether their devices met the criteria for tracking under section 519(e)(1), as added by the SMDA, and to initiate tracking. To assist manufacturers, paragraph (b) provided guidance concerning the types of devices FDA regarded as subject to tracking under the criteria in the regulation and previous section 519(e)(1). This guidance was provided in the form of an illustrative listing of example devices. Example devices were listed for permanently implantable devices in the table under paragraph (b)(1). Example devices were listed for life-sustaining or life-supporting devices used outside device user facilities in the table under paragraph (b)(2).

Current paragraph (c) of § 821.20 sets out FDA's authority to designate devices for tracking, under section 519(e)(2) of the act, as added by the SMDA. The devices that FDA had designated, by order, under the SMDA, as subject to tracking were identified in the table under paragraph (c).

FDA is proposing to remove current § 821.20(b), (b)(1) and its table, (b)(2) and its table, and (c) and its table because they no longer reflect the criteria for tracking, or a correct list of devices subject to tracking under section 519(e), as revised by FDAMA. Under the current tracking provisions of section 519(e) (1), as amended by FDAMA, FDA is given the authority to determine whether a class II or class III device meets the criteria, in sections 519(e)(1)(A) or (B), for devices that may require tracking. This determination is no longer the responsibility of the manufacturer, as current § 821.20(b) indicates.

FDA is authorized, under the current tracking provision under FDAMA, to exercise its discretion in determining whether a class II or class III device, meeting the criteria for ''trackable'' devices, warrants tracking. FDA must then issue a tracking order to the manufacturer of the class II or class III device when the agency determines that the device warrants being subject to the tracking requirement. Because each manufacturer of a device requiring tracking must receive a FDA tracking order, there is no need for FDA to

provide illustrative lists of example devices, as was done in current § 821.20(b)(1) and (b)(2). Moreover, because § 821.20(c) and the table under (c) listed devices subject to tracking orders under section 519(e)(2) under SMDA criteria, that list is no longer relevant under the tracking criteria, as amended by FDAMA.

As explained above, the current tracking requirement under section 519(e) of the act, as amended by FDAMA, is triggered solely by the issuance of FDA tracking orders. No useful regulatory purpose would be served by replacing, in the tracking regulation at § 821.20, previous illustrative lists of example devices requiring tracking under the SMDA, with lists of device types ordered by FDA to be tracked under FDAMA. Current manufacturers with tracking obligations have been notified by order and, therefore, do not need to look in the regulations to determine if FDA believes their devices meet the tracking criteria.

Although distributors, final distributors, and multiple distributors of tracked devices will not be provided tracking orders, as manufacturers are, FDA believes it is more expeditious and effective to keep such interested parties apprised of revisions to device types subject to tracking orders, through the use of guidance or periodic **Federal Register** notices than it is to undergo the process of changing a list in a regulation. Tracking guidance or notices will be made available to interested parties through the agency's Internet and Facts-on-Demand websites. Their availability also will be announced through the publication of **Federal Register** notices. These procedures will be followed when appropriate because of changes in the types of tracked devices or changes in the agency's current thinking. The status and identification of tracked devices has already been disseminated successfully in this fashion through **Federal Register** notices published on March 4, 1998 (63 FR 10638 and 63 FR 10640) and February 12, 1999 (64 FR 7197), and through tracking guidance documents made available through the Internet on these same dates.

9. Because of the proposed removal of current § 821.20(b), (b)(1), (b)(2) and (c), FDA is proposing to redesignate current § 821.20(d) as § 821.20(b). In proposed § 821.20(b), FDA has edited, revised, and deleted certain provisions of current § 821.20(d).

Current § 821.20(d) states: ''FDA, when responding to premarket notification (510(k)) submissions and approving premarket approval applications (PMA's), will notify the sponsor that FDA believes the device meets the criteria of section 519(e)(1) and therefore should be tracked.'' Proposed § 821.20(b) states: ''When responding to premarket notification submissions and approving premarket approval applications, FDA will notify the sponsor by issuing a tracking order that FDA believes the device meets the criteria of section 519(e)(1) of the act and, by virtue of the order, is required to be tracked.''

In revising current § 821.20(d) (proposed redesignated § 821.20(b)), FDA proposes to modify the language describing the content of 510(k) and PMA orders to accurately reflect that tracking requirements are accomplished by order under FDAMA.

10. FDA is proposing to amend § 821.25 *Device tracking system and content requirements:* manufacturer requirements, by revising the terms used in the introductory text of paragraphs (a)(2) and (a)(3) to identify the types of devices subject to requirements set out under § 821.25(a)(2)(i) through (a)(2)(vii) and 821.25(a)(3)(i) through (a)(3)(viii), respectively.

The current tracking regulation sets out different types of reporting requirements based on whether the device was: (1) Intended for single use or a permanent implant (§ 821.25(a)(2)) or (2) intended for multiple use (§ 821.25(a)(3)). In describing the types of tracked devices that were subject to the requirements in these paragraphs, the current regulation restates the statutory criteria of section 519(e) of the act, as added by the SMDA, that were used to subject devices to tracking. Accordingly, current § 821.25(a)(2) tracks the SMDA language by describing those types of devices that were subject to requirements for single patient use and implant devices as ''life-sustaining or life-supporting devices used outside a device user facility * * * and permanent implants * * *.'' Similarly, current § 821.25(a)(3) tracks the SMDA language by describing those types of devices that were subject to requirements for multiple patient use devices as ''life-sustaining or life supporting devices used outside device user facilities * * * .''

Proposed § 821.25(a)(2) and (a)(3) would not change the reporting requirements for single patient use, implants, or multiple patient use devices. Proposed § 821.25(a)(2) and (a)(3) merely would delete the descriptions of single use, implants, and multiple use devices that reflect SMDA criteria that no longer apply. Instead, proposed § 821.25(a)(2) and (a)(3) substitute a description of devices that are subject to reporting requirements that is consistent with the section 519(e) of the act criteria that were amended by FDAMA. For simplification purposes, however, FDA is choosing not to fully restate the revised FDAMA section 519(e) of the act criteria for tracked devices. Proposed § 821.25(a)(2) and (a)(3), instead, refer to devices subject to tracking as ''tracked devices.''

Accordingly, in the introductory paragraph of § 821.25(a)(2), FDA is proposing to remove the phrase, ''for life-sustaining or life-supporting devices used outside a device user facility,'' and the statement, ''and permanent implants that are tracked devices.'' In their place, FDA is proposing to substitute the phrase, ''for tracked devices.'' Similarly, in the introductory paragraph of § 821.25(a)(3), FDA is proposing to remove the phrase, ''for life-sustaining or life-supporting devices used outside device user facilities,'' and the clause, ''and that are tracked devices.'' In their place, FDA is proposing to substitute the phrase, ''for tracked devices.''

11. FDA proposes to further amend § 821.25 *Device tracking system and content requirements: manufacturer requirements*, by revising paragraphs (a)(2)(iii) and (a)(3)(iv). These sections currently state that manufacturers must provide ''(t)he name, address, telephone number, and social security number (if available) of the patient'' receiving or using the device. FDA is proposing to revise these sections by adding, at the end of each of these paragraphs, the clause, ''unless not released by the patient under § 821.55(a);''.

These proposed changes bring § 821.25(a)(2)(iii) and (a)(3)(iv) into conformance with section 519(e)(2) of the act which, as amended by FDAMA, specifically states that patients receiving a tracked device may refuse to release, or refuse permission to release, the type of patient identifying information required under the current regulatory requirements.

12. FDA proposes amending § 821.30 *Tracking obligations of persons other than device manufacturers: distributor requirements* by revising paragraphs (b)(3) and (c)(1)(ii) in identical fashion. The semicolons at the end of both regulatory requirements would be changed to commas and the phrase, ''unless not released by the patient under § 821.55(a);'' would be added following the comma in each requirement. These revisions are proposed for the reasons discussed above under item 11.

13. FDA is proposing to amend § 821.55 *Confidentiality*, by redesignating current paragraphs (a) and (b) as paragraphs (b) and (c),

respectively, and by adding new paragraph (a). Proposed § 821.55(a) provides that any patient receiving a tracked device, subject to the requirements of this regulation, may refuse to release, or refuse permission to release, the patient's name, address, telephone number, and social security number, or other identifying information for tracking purposes. This change would incorporate the provision of section 519(e)(2) of the act, as amended by FDAMA, and discussed in section III paragraph 11 of this document previously, into the tracking regulation.

Because the agency recognized that the accuracy of information in the tracking system was dependent, to some degree, on the cooperation of persons, such as patients, who were beyond the manufacturer's control, it has stated (57 FR 10702 at 10710, March 27, 1992) that persons required to track devices would only have to demonstrate a ''good faith'' effort to collect required tracking information and document why certain information was not obtained. This same position applies to information not obtainable under section 519(e)(2) of the act and proposed § 821.55(a).

IV. Effective Date

FDA proposes that any final rule that may issue based on this proposal become effective 30 days after the date of publication of the final rule in the **Federal Register**.

V. Environmental Impact

The agency has determined under 21 CFR 25.30 (h) that this proposed action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

VI. Analysis of Impacts

FDA has examined the impacts of the proposed rule under Executive Order 12866 and the Regulatory Flexibility Act (5 U.S.C. 601–612) (as amended by subtitle D of the Small Business Regulatory Fairness Act of 1996 (Public Law 104–721)), and the Unfunded Mandates Reform Act (Public Law 104–4). Executive Order 12866 directs agencies to assess all costs and benefits of available regulatory alternatives and, when regulation is necessary, to select regulatory approaches that maximize the benefits (including potential economic, environmental, public health and safety, and other advantages; distributive impacts; and equity). The Unfunded Mandates Reform Act (in section 202) requires that agencies prepare an assessment of anticipated costs and benefits before proposing any expenditure by State, local, and tribal Governments, in the aggregate, or by the private sector of $100 million in any 1 year. Under the Regulatory Flexibility Act, unless an agency certifies that a rule will not have a significant impact on a substantial number of small entities, the agency must analyze regulatory options that would minimize any significant economic impact of a rule on small entities.

Regulations implementing the tracking requirements of the Safe Medical Devices Act became effective on August 29, 1993. The purpose of device tracking is to ensure that manufacturers of certain devices establish tracking systems that will enable them to promptly locate devices in commercial distribution. Device tracking systems can reduce serious risks by facilitating patient notifications and device recalls. Manufacturers of certain devices are required to develop, document, and operate a tracking system that will allow them a quick notification to all distributors, health professionals, or patients of a recall or the existence of a serious health risk. The Food and Drug Administration Modernization Act of 1997 (FDAMA) amends the scope of devices that may be subject to tracking requirements, and requires the agency to issue an ''order'' notifying manufacturers to adopt a tracking method. This proposed rule codifies the FDAMA changes by amending the 1993 regulation to give FDA greater flexibility to issue and rescind tracking orders in response to changing market risks. In December of 1997, FDA advised manufacturers that the tracking requirements imposed by previous FDA regulations would remain in effect until the agency notified a firm of any change in responsibilities. On February 11, 1998, FDA sent current tracking orders to manufacturers of all of the device types listed in the 1993 device tracking regulation. Beginning in August 1998, FDA used its discretionary authority under FDAMA to rescind tracking orders for approximately half of these devices because it was determined that they did not have a level of risk warranting device tracking. Later, FDA issued tracking orders to manufacturers of two additional devices known to be associated with serious risks and limited the scope for two other device types. The discussion below estimates the cost consequences attributable to these changes in the list of devices required to be tracked.

A recent agency analysis projects that the cost to industry of maintaining device tracking systems will rise from approximately $40 million in 1999, to $71 million in 2006 (Ref. 1). As detailed in that analysis, this estimate accounts for the FDAMA-related changes that: (1) Add approximately $1.0 million in new annualized costs to track the additional devices for which orders were sent in December 1998, and September 1999, and (2) save industry approximately $19.2 million per year by eliminating tracking for a number of device types and limiting the scope of another device to those used outside device user facilities. Although FDAMA changed the scope of devices subject to tracking, no requirements have been added for devices that are already tracked. Therefore, the manufacturers and distributors of devices that are already being tracked will not incur additional costs as a result of this proposed rule. The FDAMA-related changes to the 1993 list of devices result in net savings to industry of approximately $18.2 million per year (i.e., $19.2 million minus $1.0 million). In the future, the total cost of industry device tracking systems may increase as devices are added or decrease as devices are rescinded. FDA could not forecast the cost or cost savings of such future actions, however, it is likely that these would be incurred at the same rate as they have since the requirements became effective in 1993.

This proposed rule would also reduce agency costs by bypassing expensive rulemaking procedures each time a device is added to or removed from the tracking list. This analysis does not quantify these costs, although a substantial savings is expected from this more flexible and efficient system.

FDA has reviewed this proposed rule and has determined it is consistent with the regulatory philosophy and principles identified in the Executive Order and these two statutes. Because the costs of the proposed rule total less than $100 million in any one year, the proposed rule is not a ''significant regulatory action'' under the Executive Order and FDA is not required to perform a cost benefit analysis under the Unfunded Mandates Reform Act.

Although these changes have, so far, resulted in a net savings to industry, the manufacturers and distributors of the two added devices, which are both implants, will incur additional costs. The four manufacturers of these devices will incur total average annualized costs of approximately $982,000. The agency is unsure how many distributors are affected, but estimates that distributors will incur average annualized costs of $66,000. High-technology or specialty items such as implants usually move directly from the manufacturer to the

hospital,[1] and therefore, the agency considers the hospital to be the final and only distributor in the distribution chain for implantable devices. There are approximately 5,057 community hospitals in the United States.[2] If only 10 percent of these hospitals implant the estimated 22,000 units sold per year of the added devices, the average cost per hospital would be $130 per year. Based on 1997 gross revenue estimates of $564.4 billion for the 5,057 community hospitals,[3] this $130 per hospital cost would be significantly lower than 1 percent of the $111.6 million average gross revenue per hospital. Therefore, under the Regulatory Flexibility Act (5 U.S.C. 605(b)), the agency certifies that the proposed rule would not have a significant economic effect on a substantial number of small entities.

VII. Submission of Comments

Interested persons may, on or before July 24, 2000, submit to the Dockets Management Branch (address above) written comments regarding this proposal. Two copies of any comments are to be submitted except that individuals may submit one copy. Comments are to be identified with the docket number found in brackets in the heading of this document. Received comments may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday.

VIII. Paperwork Reduction Act of 1995

A. Summary

This proposed rule contains information collection provisions that are subject to review by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3502). A description of these provisions is given below with an estimate of the annual reporting and recordkeeping burden. Included in the estimate is the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing each collection of information.

FDA invites comments on: (1) Whether the proposed collection of information is necessary for the proper performance of FDA's functions, including whether the information will have practical utility; (2) the accuracy of FDA's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques, when appropriate, and other forms of information technology.

Title: Medical Devices; Device Tracking (Amended)

Description: FDA is proposing to amend the device tracking regulation to conform the regulation to, and implement, changes made in section 519(e)(1) and (e)(2) of the act by FDAMA.

This proposed rule revises the scope, removes the lists of tracked devices, and amends certain confidentiality requirements of the current medical device tracking regulation (part 821). This proposed rule also proposes to make certain nonsubstantive revisions in the tracking regulation to remove outdated references or to simplify terminology.

Under the proposed revised scope of the amended tracking regulation, FDA is requiring manufacturers of class II or class III devices, including repackers, relabelers, and importers of such devices, when required by tracking orders issued by FDA for particular devices, to adopt a method of tracking the devices throughout distribution to the device user or patient. Under proposed additional patient confidentiality provisions, patients may refuse, or refuse permission, to release particular identification information. Though revisions of certain other requirements are proposed for simplification purposes, tracking requirements are not changed substantively.

Manufacturers of tracked devices, i.e., devices subject to FDA tracking orders, would continue to be required by the proposed amended regulation to gather, record, maintain, and make available during FDA inspection, and to provide within 3 or 10 working days, upon FDA request, information on the location and current users of tracked devices, and other use-related information. Upon receiving tracked devices, distributors, final distributors, and multiple distributors must continue to provide tracked device manufacturers with device identity and receipt information and, when applicable, patient identity and other related usage information.

The purpose of these tracking requirements, as proposed for revision, continues to be to facilitate manufacturers identifying the current location and identity of all persons using tracked devices, to the extent permitted by patients. With this information, manufacturers of tracked devices and FDA can expedite the recall of distributed tracked devices that are dangerous or defective.

Description of Respondents: Manufacturers, including repackers, relabelers, and importers, and distributors, final distributors, and multiple distributors involved in the manufacture and distribution of tracked devices. FDA estimates the burden of this collection of information as follows:

TABLE 1.—ESTIMATED AVERAGE ANNUAL REPORTING BURDEN[1]

21 CFR section	No. of respondents	Annual frequency of response	Total annual responses	Hours per response	Total hours
821.2 (also 821.30(e))	4	1	4	12	48
821.25(a)	1	1	1	76	76
821.25(d)	19	1	19	2	38
821.30(a), (b)	17,000	65	1,113,295	0.1666	185,475
821.30(c)(2)	1	1	1	28	28
821.30(d)	17,000	13	213,067	0.1666	35,497
Total					221,162

[1] There are no capital costs or operating and maintenance costs associated with this collection of information.

[1] ''From Producer to Patient: Valuing the Medical Products Distribution Chain,'' Ernst & Whinney, prepared for the Health Industry Distributors Association, p. III–9.

[2] *''Hospital Statistics,''* Health Forum, an American Hospital Association Co., 1999 edition, table 3, p. 8.

[3] *''Hospital Statistics,''* Health Forum, an American Hospital Association Co., 1999 edition, table 3, p. 9.

TABLE 2.—ESTIMATED ANNUAL REPORTING BURDEN[1]

21 CFR Section	No. of Respondents	Annual Frequency per Response	Total Annual Responses	Hours per Response	Total Hours
821.25(b)	207	41,731	8,638,334	0.2899	2,504,253
821.25(c)	207	1	207	20.5	4,236[2]
821.25(c)(3)	207	1,017	210,562	0.2899	61,042
Total					2,569,531

[1] There are no capital costs or operating and maintenance costs associated with this collection of information.
[2] Includes one-time burden of 1,584 hours.

B. Background Facts and Assumptions

1. Average Figures

Burden estimates for information collections are based on data and methods set forth in FDA's 1999 analysis, ''Cost Assessment of Medical Device Tracking,'' (Ref. 1). That analysis estimates industry costs for current device tracking systems through the year 2006 and cost savings for devices no longer tracked under FDAMA. Burdens shown in the tables 1 and 2 of this document and described elsewhere in this document, are average annual figures for the years 1999 to 2001.

2. Respondents

FDA has issued tracking orders to 207 manufacturers to track 13 types of devices intended to be implanted for more than 1 year (hereinafter referred to as ''tracked implants'') and 4 types of life-sustaining or life-supporting devices that are used outside device user facilities (hereinafter referred to as ''tracked l/s-l/s devices''). FDA estimates that some 17,000 distributors, final distributors, and multiple distributors are subject to tracking reporting requirements as follows: 171 wholesalers, electromedical equipment; 1,252 retailers, hospital equipment and supplies; 10,500 home care dealers/ medical equipment rental companies (median of 6,000 to 15,000 dealer estimate); and 5,057 U.S.-community hospitals (16,980 (total) rounded to 17,000).

3. Tracked Implant Devices

Using implantation procedures data from the National Center for Health Statistics for 1993 through 1996, FDA applies a 2 percent annual growth rate to estimate number of procedures for tracked implant devices from 1997 through 2006 (Ref. 1). Table 3 of this document shows 1993 to 1996 figures, and table 4 of this document shows projections through 2001. FDA issued tracking orders for dura mater implants in December 1998 and for abdominal aortic aneurism (AAA) stent grafts in September 1999. Data for these devices are first considered in the appropriate years.

TABLE 3.—NUMBER OF IMPLANTATION PROCEDURES PER TRACKED IMPLANTS (1993 TO 1996)

Device Type	ICD[1] Number	Number of Procedures in 1993	Number of Procedures in 1994	Number of Procedures in 1995	Number of Procedures in 1996
Implantable pacemaker pulse generator	37.8	123,000	139,000	136,000	155,000
Cardiovascular permanent implantable pacemaker electrode	37.70–37.76	108,000	131,000	128,000	132,000
Replacement heart valve	35.2	58,000	54,000	61,000	69,000
Automatic implantable cardioverter/defibrillator	37.9	21,000	21,000	27,000	26,000
Implanted cerebellar stimulator	2.93	2,000	2,000	2,000	2,000
Implanted diaphragmatic/phrenic nerve stimulator	34.85	2,000	2,000	2,000	2,000
Implantable infusion pumps	86.06	7,000	7,000	6,000	9,000
Temporomandibular joint[2]	76.92	2,000	2,000	2,000	6,000
Ventricular bypass (assist) device	37.61–37.63	33,000	35,000	48,000	56,000
Dura mater	2.12	6,000	6,000	8,000	6,000
Abdominal aortic aneurysm grafts	n/a	n/a	n/a	n/a	n/a

[1] Implantable cardiodefibrillator.
[2] This product category includes: Temporomandibular joint prosthesis, glenoid fossa prosthesis, and mandibular condyle prosthesis.

Numbers of implantations correspond to numbers of distributed tracked implants. FDA assumes that tracked implants are distributed directly from manufacturers to final distributors, which are mostly hospitals.

TABLE 4.—TRACKED IMPLANTS: ESTIMATES OF ANNUAL DISTRIBUTION AND TOTAL TRACKED DEVICES (1994 TO 2001) (BASED ON IMPLANTATION PROCEDURE DATA)

End of Year	New Implants[1]	Previous Implants	Total Tracked
1994	393,000	0	393,000
1995	412,000	393,000	805,000
1996	457,000	805,000	1,262,000
1997	466,140	1,262,000	1,728,140
1998	475,463	1,728,140	2,203,603
1999[2]	491,339	2,203,603	2,694,942
2000[3]	516,166	2,694,942	3,211,108
2001	526,489	3,211,108	3,737,598

[1]Represents estimated number of tracked implants distributed annually.
[2]Estimated distribution for dura mater implants is included in 1999 to 2001, *et al.*, estimates.
[3]Estimated distribution for abdominal aortic aneurysm stent grafts is included in 2000 and 2001, et al., estimates.

4. Tracked l/s-l/s Devices

FDA uses unit shipment data and forecasts from 1992 and 1994 published sources, in combination with various growth rates (Ref. 1) to estimate annual sales/distribution of four types of tracked l/s-l/s devices. See table 5 of this document.

TABLE 5.—TRACKED LIFE-SUPPORTING DEVICES-ESTIMATED NUMBER OF UNITS (1991 TO 2001)

Year	Breathing Frequency Monitors	Continuous Ventilators	Direct Current Defibrillators and Paddles			Infusion Pumps (electromechanical only)		
	Total Units	Total Units	Alternate Care Units	Physician Office Units	Total Units	Syringe Units	Ambulatory Units	Total Units
1991	n/a	n/a	14,000	3,150	17,150	n/a	n/a	n/a
1992	n/a	n/a	17,850	3,591	21,441	n/a	n/a	n/a
1993	n/a	n/a	22,759	4,094	26,852	n/a	n/a	n/a
1994	12,200	4,300	29,017	4,667	33,684	23,600	30,900	54,500
1995	12,300	4,700	36,997	5,320	42,317	26,200	34,500	60,700
1996	12,800	5,100	47,171	6,065	53,236	29,100	37,500	66,600
1997	13,300	5,600	60,144	6,914	67,058	32,300	40,800	73,100
1998	13,900	6,200	76,683	7,882	84,565	35,700	44,100	79,800
1999	14,500	6,900	97,771	8,986	106,757	39,300	47,300	86,600
2000	15,100	7,700	124,658	10,244	134,902	43,000	50,400	93,400
2001	15,569	8,387	158,939	11,678	170,617	47,105	54,571	101,676

C. Burden Estimates

1. Under § 821.2, manufacturers, importers, or distributors, including final distributors, and multiple distributors, may request exemptions and variances from tracking requirements. These requests must meet the requirements for filing a citizen petition under § 10.30 (21 CFR 10.30). FDA's burden estimates for citizen petitions are approved under OMB control number 0910–0183.

The estimate for § 821.2 assumes requesters would need about 12 additional hours per petition to provide information not required under § 10.30, such as suitable alternative tracking methods justifying a variance. FDA has received an average of four requests a year for exemptions and variances from manufacturers, distributors, final distributors, and trade associations in behalf of such firms. Burdens for distributors, final distributors, and multiple distributors to submit variance or exemption requests, under § 821.30(e), are included in the estimate for § 821.2.

2. Section 821.25(a) requires manufacturers to adopt a tracking method that can provide, upon FDA request—within 3 working days, for all tracked devices, prior to distribution to patients, data about the distributors, within 10 working days, for tracked devices for single patient use, after distribution to patients, data about the devices, shipping, patients, use, and physicians, and within 10 working days, for tracked devices for multiple patient use, after distribution to multiple distributors, data about the devices, shipping, multiple distributors, use, patients, and physicians.

FDA has never requested such deadline disclosures. Assuming one occurrence a year, FDA estimates it would take a firm some 20 hours to provide location data for all tracked devices within 3 days, and 56 hours to identify all patients and/or multiple distributors possessing tracked devices.

3. Under § 821.25(d), manufacturers must notify FDA of distributor noncompliance with reporting requirements. FDA is unaware of receiving any such notices and assumes only repeated noncompliance would be reported. FDA believes it would receive no more than 19 notices in any year. This assumes manufacturers annually audit about 5 percent of the data reported by distributors against data base entries and that some 10 percent of audited records (approximately 19,000) might be inaccurate and require further followup. FDA believes only 0.1 percent of further audited data might represent repetitive distributor noncompliance and that it would take about 2 hours per incident to report repeated distributor noncompliance to FDA.

4. Under § 821.30(a), distributors, final distributors, and multiple distributors must report receipt related data to manufacturers, upon acquiring tracked devices. Under § 821.30(b), final distributors of tracked devices, intended to be used by a single patient over the useful life of the device, must report patient and usage related information, upon distributing the devices to patients. The agency estimates distributor reporting burdens for tracked implants and tracked l/s-l/s devices as follows:

Distributor reporting for tracked implants: Tracked implants are tracked devices intended for single patient usage. FDA assumes hospitals, for the most part, are the direct recipients of tracked implants. As final distributors, they must report both the receipt and implantation of tracked implants, but FDA believes most, in practice, make only one report to manufacturers at implantation. FDA believes most hospitals rely on manufacturer distribution records identifying initial consignees of devices, as required by the Quality System regulation (21 CFR 820.160), in lieu of reporting the receipt of tracked devices back to the manufacturers. Thus, only one report is attributed to final distributors of tracked implants in FDA's estimate.

FDA estimates it would take 10 minutes (0.1666 hours) for final distributors to report tracking data for each tracked implant distributed during the year (''new implants'' per table 4 of this document). For 1999 to 2001, the average number of ''new implants'' per year is estimated as 511,331 devices, per table 4 as follows: 491,339 devices (for 1999) + 516,166 devices (for 2000) + 526,489 devices (for 2001) ÷ 3. The average annual burden for distributor reporting for these devices would be: 511,331 (average number of ''new implants'') x 1 final distributor per device x 1 data report per final distributor x 0.1666 hours per report = 85,188 hours.

Distributor reporting for tracked l/s-l/s devices: FDA estimates there are from one to three, or a median of two, distributors or multiple distributors in distribution chains for three types of tracked l/s-l/s devices, that is, tracked breathing frequency monitors (infant apnea monitors), continuous ventilators, and direct current (DC)-defibrillators and pads. There are no final distributors for tracked l/s-l/s devices because each device is intended for multiple patient usage. Each distributor or multiple distributor would make one data report per device received during the year. See table 6 of this document for annual distribution.

For 1999 to 2001, the average number of ''total units'' (table 5 of this document) and ''new devices'' (table 6 of this document) of the above three types of tracked l/s-l/s devices distributed per year would be 160,144, as estimated per table 5 as follows: 14,500 + 6,900 + 106,757 devices (for 1999) + 15,100 + 7,700 + 134,902 devices (for 2000) + 15,569 + 8,387 + 170,617 devices (for 2001) ÷ 3. The average annual burden for distributor reporting for these three types of tracked l/s-l/s devices is estimated as: 160,144 (average number of ''new devices'') x 2 distributors or multiple distributors per device x 1 data report per distributor or multiple distributor x 0.1666 hours per report = 53,360 hours.

FDA estimates there are from one to five, or a median of three, distributors or multiple distributors in distribution chains for one type of tracked l/s-l/s device, that is, electromechanical infusion pumps that are tracked. For 1999 to 2001, the average number of ''total units'' (table 5 of this document) and ''new devices'' (table 6 of this document) of tracked electromechanical infusion pumps distributed per year would be 93,892 devices, as estimated per table 6 of this document as follows: 86,600 devices (for 1999) + 93,400 devices (for 2000) + 101,676 devices (for 2001) ÷ 3. The average annual burden for distributor reporting for this one type of tracked l/s-l/s device would be: 93,892 (average number of ''new devices'') x 3 distributors or multiple distributors x 1 data report x 0.1666 hours = 46,927 hours.

TABLE 6.—TRACKED LIFE-SUSTAINING OR LIFE SUPPORTING DEVICES—ESTIMATED DISTRIBUTION

End of Year	Breathing Frequency Monitors, Continuous Ventilators, and Defibrillators		Infusion Pumps		Percent Audited	Audits per Year
	New Devices	Average No. of Distributors/ Data Reports	New Devices	Average No. of Distributors/ Data Reports		
1994	50,184	2	54,500	3	5%	2
1995	59,317	2	60,700	3	5%	2
1996	71,136	2	66,600	3	5%	2
1997	85,958	2	73,100	3	5%	1
1998	104,665	2	79,800	3	5%	1
1999	128,157	2	86,600	3	5%	1
2000	157,702	2	93,400	3	5%	1
2001	194,572	2	101,676	3	5%	1

5. Section 821.30(c)(1) requires multiple distributors to keep written records, containing patient identity and other information, each time a tracked device is distributed to patients (or users). The required information is recorded and/or kept on a daily basis by device rental and leasing firms, and other multiple distributors, as a customary and usual business practice, for purposes of billing, inventory control, liability protection, and other fiscal accounting. Therefore, the burden hours attributed to this provision are not included in the burden estimate (5 CFR 1320.3(b)(2)).

6. Under § 821.30(c)(2), multiple distributors must provide data on current users of tracked devices, current device locations, and other information, within 5 working days of a request from a manufacturer, or within 10 working days of a request from FDA. FDA is unaware of any manufacturer making such a request, nor has the agency made such a request.

Assuming one multiple distributor receives one request in a year from both a manufacturer and FDA, the agency estimates the multiple distributor would need from 3 to 4 days, or a median of 3.5 days, to comply.

7. Section 821.30(d) requires distributors, final distributors, or multiple distributors to make available for auditing, upon a manufacturer's written request, records required under this tracking regulation. FDA is unaware of manufacturers making written audit requests. However, distributors, final distributors, and multiple distributors do incur a burden in responding to manufacturer requests to verify data under manufacturer auditing of tracking system data. FDA assumes most such data verification is accomplished by telephone during ''distributor audit responses,'' which includes responses from final distributors and multiple distributors as well.

FDA's estimate of the burden for distributor audit responses assumes: Manufacturers audit data base entries for 5 percent of tracked devices distributed; entries in tracking system data bases approximate, in number and amount, data reported by distributors (data reports); and, each audited data base entry prompts one distributor audit response. FDA estimates that all distributors will take 10 minutes (0.1666 hours) to verify data. FDA allows that 10 percent of audited data might be found noncompliant, i.e., discrepant, and would require further followup responses from distributors to confirm, correct, or update data.

Distributor audit responses for tracked implants: Certain final distributors that handle tracked implants would be asked by manufacturers to verify data for 5 percent of the total number of implants actively tracked (''total tracked'' implants in table 7 of this document= ''new implants'' + ''previous implants'' in table 4 of this document). Data for dura mater and AAA stent grafts must be audited twice a year because the devices are in the first 3 years of tracking (see 21 CFR 821.25(c)(3)). FDA adjusts for these devices by factoring in the percentage they constitute of ''total tracked'' devices (shown in table 7 of this document). Data for all other tracked implants are audited once a year.

For 1999 to 2001, the average number of ''total tracked'' implants tracked per year amounts to 3,214,549 devices, as estimated per tables 4 and 7 of this document as follows: 491,339 + 2,203,603 devices (for 1999) + 516,166 + 2,694,942 devices (for 2000) + 526,489 + 3,211,108 devices for (2001) ÷ 3. The average annual burden for distributor audit responses regarding data for tracked implants, audited once a year, is estimated as: 3,214,549 devices (average number of ''total tracked'' implants) x 1 data report per device from final distributors x 1 data base entry per data report x .05 (percentage of data base entries audited) x .996 (percentage of entries audited once a year) x 1 distributor audit response per audited record x 0.1666 hours (10 minutes) per response = 26,678 hours.

Adding 10 percent for additional responses to followup verification of noncompliant data increases the burden to 29,346 hours. Applying the above formula to the 0.37 percent (average percentage) of total tracked implants whose data are audited twice a year results in an additional 635 burden hours (includes 10 percent for additional followups).

Distributor audit responses for tracked l/s-l/s devices: Distributors and multiple distributors of three types of tracked l/s-l/s devices, that is, breathing frequency (infant apnea) monitors, continuous ventilators, and DC-defibrillators would be asked to verify audited data for these devices. Only the data for ''new devices'' distributed each year would be audited. For 1999 to 2001, the average number of ''new devices'' of these three types of tracked l/s-l/s devices would be 160,144 devices, as estimated per table 6 of this document as follows: 128,157 devices (for 1999) + 157,702 devices (for 2000) + 194,572 devices (for 2001) ÷ 3.

The average annual burden for distributor audit responses regarding data for these three types of tracked l/s-l/s devices would be: 160,144 devices (average number of ''new devices'' distributed per year) x 2 data reports per device (based on mean number of distributors or multiple distributors in distribution chains) x 1 data base entry per distributor data report x .05 (percentage of entries audited) x 1 distributor audit response per audited record x 0.1666 hours per response = 2,668 hours. Adding 10 percent for additional responses to verify

noncompliant data increases the burden to 2,935 hours.

For 1999 to 2001, the average number of ''total units''(table 5 of this document), and ''new devices'' (table 6 of this document), of tracked electromechanical infusion pumps distributed per year would be 93,892 ''new devices,'' as estimated per table 6 as follows: 86,600 devices (for 1999) + 93,400 devices (for 2000) + 101,676 devices (for 2001) ÷ 3. The average annual burden for distributor audit responses regarding data for electromechanical infusion pumps that are tracked l/s-l/s devices is estimated as: 93,892 devices (average number of ''new devices'') x 3 reports (based on mean number of distributors or multiple distributors) x 1 data base entry x .05 entries audited x 1 distributor response x 0.1666 hours = 2,346 hours. Adding 10 percent for additional followup responses by distributors increases the burden to 2,581 hours.

TABLE 7.—TRACKED IMPLANTS: ESTIMATED DISTRIBUTION AND AUDIT FREQUENCY

End of Year	Total Tracked	Percent Audited	Tracked Since 1994		Tracked Since 1999	
			Percent of Total	Audits per Year	Percent of Total	Audits per Year
1994	393,000	5%	100.0%	2	n/a	n/a
1995	805,000	5%	100.0%	2	n/a	n/a
1996	1,262,000	5%	100.0%	2	n/a	n/a
1997	1,728,140	5%	100.0%	1	n/a	n/a
1998	2,203,603	5%	100.0%	1	n/a	n/a
1999[1]	2,694,942	5%	99.8%	1	0.2%	2
2000[2]	3,211,108	5%	99.6%	1	0.4%	2
2001	3,737,598	5%	99.5%	1	0.5%	2

[1] Procedural data for dura mater is included in the 1999 through 2001 estimates.
[2] Procedural data for abdominal aortic aneurysm stent grafts is included in the 2000 through 2001 estimates.

8. Under § 821.25(b) manufacturers must maintain current tracking records in accordance with standard operating procedures (SOP's). To maintain data bases, manufacturers conduct ''transactions,'' such as receiving data from distributors (distributor data reports), registering patients, making data base entries, and auditing entries against distributor data. Audit activities are estimated separately (§ 821.25(c)(3)).

Data base for tracked implants: For this estimate, and in FDA's ''Cost Assessment'' (Ref. 1), FDA uses a consulted implant manufacturer's estimate that his firm conducts some 2.5 data base transactions at a cost of about $5 per transaction. Using a composite wage rate of $17.25 for involved personnel, each transaction costing $5 would take personnel approximately 17 minutes (0.2899 hour) to complete. For 1999 to 2001, the average number of ''total tracked'' implants actively tracked per year amounts to 3,214,549 devices, as estimated per table 7 of this document as follows: 2,694,942 devices (for 1999) + 3,211,108 devices (for 2000) + 3,737,598 devices (for 2001) ÷ 3. The average annual burden for data base transactions for tracked implants is estimated as: 3,214,549 (average number of ''total tracked'' implants) x 2.5 data base transactions per year x 0.2899 hours per transaction = 2,329,744 hours.

Data base for tracked l/s-l/s devices: For three types of tracked l/s-l/s devices, i.e., tracked breathing frequency monitors, continuous ventilators, and DC-defibrillators, the average annual burden for data base transactions would be: 160,144 devices (average number of ''new devices'' distributed per year) (128,157 devices (for 1999) + 157,702 devices (for 2000) + 194,572 devices (for 2001) ÷3, per table 6 of this document) x 2 distributors or multiple distributors per device (based on the mean number in distribution chains) x 1 data report per distributor x 1 data base transaction per report x 0.2899 hour (17 minutes) per transaction = 92,851 hours.

For one type of tracked l/s-l/s device, i.e., electromechanical infusion pumps, the average annual burden would be: 93,892 devices (average number of ''new devices'' distributed per year) (86,600 devices (for 1999) + 93,400 devices (for 2000) + 101,676 devices (for 2001) ÷ 3, per table 6) x 3 distributors or multiple distributors x 1 data report x 1 transaction x 0.2899 hour per transaction = 81,658 hours.

9. Under § 821.25(c), manufacturers must establish SOP's for collecting, maintaining, and auditing tracking data.

Two dura mater manufacturers and one AAA stent graft manufacturer would have one-time burdens. FDA estimates these three firms would take an average of two staff months to plan and develop a tracking system, and one month to draft and implement standard operating procedures (SOP's), including the development of audit SOP's. This amounts to 1,584 hours (3 firms x 3 months x 22 working days per month x 8 hours per day). There would be no such burdens for 204 manufacturers that have had tracking systems in place since 1993.

Manufacturers with tracking systems in place would review and/or revise their tracking system SOP's on an annual basis, expending approximately 10 percent of the amount of time spent originally in drafting the SOP's, i.e., 22 days x 8 hours per day = 18 hours. Over the 3 years, 1999 to 2001, 617 firms would annually revise tracking SOP's as follows: 204 firms (excludes dura mater firms) for 1999, 206 firms (includes 2 dura mater firms, excludes 1 AAA stent firm) for 2000, and 207 firms (includes all) for 2001. The total annual burden for revising SOP's for 3 years would amount to: 617 firms x 18 hours per firm = 11,106 hours.

For 1999 to 2001, the average total annual burden (annualized burden) would be 4,236 hours: 1, 584 hours (total one time burdens) + 11,106 hours (total annual burdens) ÷ 3 years.

10. Section 821.25(c)(3) requires that the auditing SOP of manufacturers include a quality assurance program that has audit procedures to be run for each tracked device product for the first 3 years of distribution and once a year thereafter. As discussed under § 821.30(d), FDA's burden estimate for manufacturer auditing assumes firms would audit 5 percent of records for products, based on numbers of devices actively tracked (implants) each year, or distributed (tracked l/s-l/s devices) each year. Tracking data base entries, corresponding in numbers and kind, to distributor data reports (and, for tracked implants, implanted patient reports) would be verified by phone through distributor data responses or patient contacts. FDA provides for 10 percent further followups for noncompliance, i.e., to change inaccurate or update data. Burdens are estimated for auditing data for tracked implants and tracked l/s-l/s products as follows below.

Manufacturer auditing for tracked implants: Using the same $5 per tracking ''transaction'' figure that was used for data base maintenance estimates, FDA assumes auditing transactions would take 17 minutes (0.2899 hours). Manufacturers would audit data for ''total tracked'' implants, as shown in table 7 of this document. ''Total tracked'' implants correspond to amounts actively tracked each year (''new implants'' + ''previous implants'' in table 4 of this document) and take into account devices distributed in previous years that are implanted and continue to be tracked for 8 subsequent years, the approximate lifetime of implants that FDA uses.

On average, about 99.63 percent (99.8 percent (for 1999) + 99.6 percent (for 2000) + 99.5 percent (for 2001) ÷ 3, per table 7 of this document) of the data audited (i.e. 5 percent of the total data base entries corresponding to the average number of total tracked devices for 1999 to 2001) would be audited once a year and 10 percent of this data would be further audited. On average, about .37 percent of the 5 percent of data base entries audited (the approximate amount comprised by data base entries for dura mater and AAA stents) would be audited twice.

For 1999 to 2001, the average annual burden for auditing tracked implants requiring one audit per year would be: 3,214,549 devices (average number of ''total tracked'' implants actively tracked each year) (2,694,942 devices (for 1999) + 3,211,108 devices (for 2000) + 3,737,598 devices (for 2001) ÷ 3, per table 7 of this document) x 1 final distributor data report per ''new implant'' upon implantation (or 1 implanted patient report per ''previous implant'' distributed) per data base entry x .05 (percentage of data base entries audited) x .996 (average percentage of entries audited once per year) x .2899 hours (17 minutes) per audit transaction = 46,423 hours. Adding 10 percent for followup auditing increases the burden to 51,065 hours.

Applying the above formula to data base entries for tracked implants requiring 2 audits per year (an average .0037 of total tracked devices) results in 345 hours. A 10 percent additional followup rate makes 380 burden hours.

Manufacture auditing for tracked l/s-l/s devices: For breathing frequency (infant apnea) monitors, continuous ventilator, and DC-defibrillators the data for ''new devices'' distributed each year would be audited. For 1999 to 2001, the average annual burden for these devices would be: 160,144 devices (average number of ''new devices'' distributed per year) (128,157 devices (for 1999) + 157,702 devices (for 2000) + 194,572 devices (for 2001) ÷ 3, per table 6 of this document) x 2 data reports per device (based on the mean of the number of distributors or multiple distributors in distribution chains) x 1 data base entry per distributor or multiple distributor data report x .05 (percentage of entries audited) x .2899 hours = 4,642 hours.

Adding 10 percent for additional followup results in 5,106 hours.

Applying the above formula to 93,892 electromechanical infusion pumps that are tracked l/s-l/s devices (average number of ''new devices''), having a mean of three distributors or multiple distributors, would result in 4,083 hours. A 10 percent additional audit rate makes 4,491 hours.

In compliance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)), the agency has submitted the information collection provisions of this proposed rule to OMB for review. Interested persons are requested to send comments regarding information collection by May 25, 2000, to the Office of Information and Regulatory Affairs, OMB (address above).

IX. References

The following reference has been placed on display in the Dockets Management Branch (address above) and may be seen by interested persons between 9 a.m. and 4 p.m., Monday through Friday.

1. ''Cost Assessment of Medical Device Tracking,'' Economics Staff, Food and Drug Administration, 1999.

List of Subjects in 21 CFR Part 821

Imports, Medical devices, Reporting and recordkeeping requirements.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs, FDA proposes to amend part 821 to read as follows:

PART 821—MEDICAL DEVICE TRACKING REQUIREMENTS

1. The authority citation for 21 CFR part 821 continues to read as follows:

Authority: 21 U.S.C. 331, 351, 352, 360, 360e, 360h, 360i, 371, 374.

2. Section 821.1 is amended by revising paragraphs (a) and (b); by removing paragraph (c); and by redesignating paragraphs (d) and (e) as paragraphs (c) and (d), respectively, to read as follows:

§ 821.1 Scope.

(a) The regulations in this part implement section 519(e) of the Federal Food, Drug and Cosmetic Act (the act), which provides that the Food and Drug Administration may by order require a manufacturer to adopt a method of tracking a class II or class III device, the failure of which would be reasonably likely to have serious adverse health consequences, or which is intended to be implanted in the human body for more than 1 year, or which is a life-sustaining or life-supporting device used outside a device user facility. A device required by FDA order to be tracked is subject to this part and is referred to herein as a tracked device.

(b) These regulations are intended to ensure that tracked devices can be traced from the device manufacturing facility to the person for whom the device is indicated, that is, the patient. Effective tracking of devices from the manufacturing facility, through the distributor network (including distributors, retailers, rental firms and other commercial enterprises, device user facilities, and licensed practitioners) and, ultimately, to any person for whom the device is intended is necessary for the effectiveness of remedies prescribed by the act, such as patient notification (section 518(a) of the act) or device recall (section 518(e) of the act). Although these regulations do not preclude a manufacturer from involving outside organizations in that manufacturer's device tracking effort, the legal responsibility for complying with this part rests with manufacturers who are subject to tracking orders, and that responsibility cannot be altered, modified, or in any way voided by contracts or other agreements.

* * * * *

§ 821.2 [Amended]

3. Section 821.2 *Exemptions and variances* is amended by removing paragraph (d).

4. Section 821.3 is amended by revising paragraphs (b) and (f) to read as follows:

§ 821.3 Definitions.

* * * * *

(b) *Importer* means the initial distributor of an imported device who is subject to a tracking order. ''Importer'' does not include anyone who only furthers the marketing, i.e., brokers, jobbers, or warehousers.

* * * * *

(f) *Device intended to be implanted in the human body for more than 1 year* means a device that is intended to be placed into a surgically or naturally formed cavity of the human body for more than 1 year to continuously assist, restore, or replace the function of an organ system or structure of the human body throughout the useful life of the device. The term does not include any device which is intended and used only for temporary purposes or which is intended for explantation in 1 year or less.

* * * * *

5. Section 821.20 is amended by revising paragraph (a), by removing paragraphs (b) and (c), by redesignating paragraph (d) as paragraph (b), and by revising newly redesignated paragraph (b) to read as follows:

§ 821.20 Devices subject to tracking.

(a) When required by a tracking order issued by FDA, a manufacturer of any class II or class III device, the failure of which would be reasonably likely to have a serious adverse health consequence, or which is intended to be implanted in the human body for more than a year, or which is life-sustaining or life-supporting and used outside a device user facility, shall track that device in accordance with this part.

(b) When responding to premarket notification submissions and approving premarket approval applications, FDA will notify the sponsor by issuing a tracking order that states that FDA believes the device meets the criteria of section 519(e)(1) of the act and, by virtue of the order, is required to be tracked.

6. Section 821.25 is amended by revising the introductory text of paragraph (a)(2), paragraph (a)(2)(iii), the introductory text of paragraph (a)(3), and paragraph (a)(3)(iv) to read as follows:

§ 821.25 Device tracking system and content requirements: manufacturer requirements.

(a) * * *

(2) Within 10 working days of a request from FDA for tracked devices that are intended for use by a single patient over the life of the device, after distribution to or implantation in a patient:

* * * * *

(iii) The name, address, telephone number, and social security number (if available) of the patient receiving the device, unless not released by the patient under § 821.55(a);

* * * * *

(3) Except as required by order under section 518(e) of the act, within 10 working days of a request from FDA for tracked devices that are intended for use by more than one patient, after the distribution of the device to the multiple distributor:

* * * * *

(iv) The name, address, telephone number, and social security number (if available) of the patient using the device, unless not released by the patient under § 821.55(a);

* * * * *

§ 821.30 [Amended]

7. Section 821.30 *Tracking obligations of persons other than device manufacturers: distributor requirements* is amended in paragraphs (b)(3) and

(c)(1)(ii) by removing the semicolon at the end of each paragraph and adding in its place ‘‘, unless not released by the patient under § 821.55(a);’’.

8. Section 821.55 is amended by redesignating paragraphs (a) and (b) as paragraphs (b) and (c), respectively, and by adding paragraph (a) to read as follows:

§ 821.55 Confidentiality.

(a) Any patient receiving a device subject to tracking requirements under this part may refuse to release, or refuse permission to release, the patient’s name, address, telephone number, and social security number, or other identifying information for the purpose of tracking.

* * * * *

Dated: February 14, 2000.

Margaret M. Dotzel,

Acting Associate Commissioner for Policy.

[FR Doc. 00–10251 Filed 4–24–00; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF THE TREASURY

Bureau of Alcohol, Tobacco and Firearms

27 CFR Parts 4, 5, and 7

[Notice No. 896; Re: Notice Nos. 884 and 892]

RIN 1512–AB97

Health Claims and Other Health-Related Statements in the Labeling and Advertising of Alcohol Beverages; Cancellation and Rescheduling of Public Hearings (99R–199P)

AGENCY: Bureau of Alcohol, Tobacco and Firearms (ATF), Department of the Treasury.

ACTION: Notice of proposed rulemaking; cancellation and rescheduling of public hearings.

SUMMARY: Due to the low number of requests to present oral comments, the Bureau of Alcohol, Tobacco and Firearms (ATF) is announcing the cancellation of three public hearings that were to be held concerning health claims and other health-related statements in the labeling and advertising of alcohol beverages. In addition, the hearings scheduled for Washington, DC and San Francisco, California will be limited to two days. We are also changing the date for submission of written (or e-mail) comments.

DATES: The revised hearing dates are:

1. April 25 and April 26, 2000, 10:00 a.m. to 5 p.m., Washington, DC.

2. May 23 and May 24, 2000, 10:00 a.m. to 5 p.m., San Francisco, CA.

Written (or e-mail) comments addressing Notice Nos. 884 and 892, as well as comments addressing testimony presented at the hearings, must be received on or before June 30, 2000.

ADDRESSES: The hearing locations are:

1. Washington, DC—Washington Convention Center, 900 Ninth Street, NW., Washington, DC 20001.

2. San Francisco—Embassy Suites San Francisco Airport, 150 Anza Boulevard, Burlingame, CA 94010.

FOR FURTHER INFORMATION CONTACT: Nancy Kern or Jim Ficaretta, Regulations Division, Bureau of Alcohol, Tobacco and Firearms, 650 Massachusetts Avenue, NW., Washington, DC 20226 (202–927–8210).

SUPPLEMENTARY INFORMATION:

Background

On February 28, 2000, ATF published a notice in the **Federal Register** (Notice No. 892; 65 FR 10434) announcing the dates and locations of five public hearings that we planned to hold concerning health claims and other health-related statements in the labeling and advertising of alcohol beverages.

The notice provided that persons wishing to testify at the hearings should submit a written notification to ATF on or before April 7, 2000. As of April 18, 2000, we had received only seven requests to testify in Atlanta; seven requests to testify in Chicago; and three requests to testify in Dallas. We do not consider that this constitutes a sufficient number of requests to justify the expense of holding these three hearings. Accordingly, we are canceling the hearings that were scheduled for Atlanta, Chicago, and Dallas. Those persons who requested to appear at these hearings have been offered several alternatives, including attending one of the remaining two scheduled hearings in Washington, DC and San Francisco, California, or submitting their written comments.

The hearings scheduled for Washington, DC and San Francisco will be limited to two days. The hearing in Washington, DC will be held on April 25 and 26, and the hearing in San Francisco will be held on May 23 and 24. The hearings in both locations will start at 10:00 a.m.

We will accept written (or e-mail) comments addressing our earlier notices on this subject, Notice No. 892 and Notice No. 884 (October 25, 1999; 64 FR 57413), as well as comments addressing testimony presented at the forthcoming hearings, until June 30, 2000. This date is approximately one month after the close of the public hearings.

Drafting Information

The author of this document is James P. Ficaretta, Regulations Division, Bureau of Alcohol, Tobacco and Firearms.

Authority and Issuance

This notice is issued under the authority of 27 U.S.C. 205.

Signed: April 19, 2000.

Bradley A. Buckles,

Director.

[FR Doc. 00–10309 Filed 4–21–00; 10:42 am]

BILLING CODE 4810–31–P

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 948

[WV–085–FOR]

West Virginia Regulatory Program

AGENCY: Office of Surface Mining Reclamation and Enforcement (OSM), Interior.

ACTION: Proposed rule; public comment period and opportunity for public hearing.

SUMMARY: OSM is announcing receipt of a proposed amendment to the West Virginia regulatory program under the Surface Mining Control and Reclamation Act of 1977 (SMCRA). The program amendment consists of changes to the West Virginia regulations (38 CSR 2) contained in House Bill 4223, and changes to the Code of West Virginia contained in Senate Bill 614. The amendments are intended to comply with the Consent Decree between the plaintiff and the West Virginia Division of Environmental Protection (WVDEP) entered on February 17, 2000, in the matter of *Bragg* v. *Robertson,* No. 2:98–636 (S.D.W.Va.).

DATES: If you submit written comments, they must be received on or before 4 p.m. (local time), on May 25, 2000. If requested, a public hearing on the proposed amendments will be held at 1 p.m. (local time), on May 22, 2000. Requests to speak at the hearing must be received by 4 p.m. (local time), on May 10, 2000.

ADDRESSES: Mail or hand-deliver your written comments and requests to speak at the hearing to Mr. Roger W. Calhoun, Director, Charleston Field Office at the address listed below.

You may review copies of the West Virginia program, the proposed amendment, a listing of any scheduled

hearings, and all written comments received in response to this document at the addresses below during normal business hours, Monday through Friday, excluding holidays. You may receive one free copy of the proposed amendment by contacting OSM's Charleston Field Office.

Mr. Roger W. Calhoun, Director, Charleston Field Office, Office of Surface Mining Reclamation and Enforcement, 1027 Virginia Street, East, Charleston, West Virginia 25301 Telephone: (304) 347–7158. E-mail: chfo@osmre.gov.

West Virginia Division of Environmental Protection, 10 McJunkin Road, Nitro, West Virginia 25143, Telephone: (304) 759–0515. The proposed amendment will be posted at the Division's Internet page: *http://www.dep.state.wv.us*.

In addition, you may review copies of the proposed amendment during regular business hours at the following locations:

Office of Surface Mining Reclamation and Enforcement, Morgantown Area Office, 75 High Street, Room 229, P.O. Box 886, Morgantown, West Virginia 26507, Telephone: (304) 291–4004

Office of Surface Mining Reclamation and Enforcement, Beckley Area Office, 323 Harper Park Drive, Suite 3, Beckley, West Virginia 25801, Telephone: (304) 255–5265

FOR FURTHER INFORMATION CONTACT: Mr. Roger W. Calhoun, Director, Charleston Field Office; Telephone: (304) 347–7158.

SUPPLEMENTARY INFORMATION:

I. Background on the West Virginia Program

On January 21, 1981, the Secretary of the Interior conditionally approved the West Virginia program. You can find background information on the West Virginia program, including the Secretary's findings, the disposition of comments, and the conditions of approval in the January 21, 1981, **Federal Register** (46 FR 5915–5956). You can find later actions concerning the conditions of approval and program amendments at 30 CFR 948.10, 948.12, 948.13, 948.15, and 948.16.

II. Discussion of the Proposed Amendment

By letters dated March 14, 2000 (Administrative Record Number WV–1147) and March 28, 2000 (Administrative Record Number WV–1148), and electronic mail dated April 6, 2000 (Administrative Record Number WV–1149), the WVDEP submitted an amendment to its program. The amendment concerns changes to the West Virginia regulations made by the State legislature in House Bill 4223, and changes made to the Code of West Virginia in Senate Bill 614. Many of the amendments are intended to comply with the Consent Decree between the plaintiff and the West Virginia Division of Environmental Protection entered on February 17, 2000, in the matter of *Bragg* v. *Robertson,* No. 2:98–636 (S.D.W.Va.).

The amendments submitted by the WVDEP are identified below.

A. Senate Bill 614

Numerous wording and paragraph notation changes have been made. These are nonsubstantive changes that will not be discussed. The substantive changes are identified below.

1. W.Va. Code 22–3–3. Definitions.

At § 22–3–3(e) the definition of ''approximate original contour'' (AOC) is amended by deleting the word ''disturbed'' and adding in its place the word ''mined.'' As amended, AOC ''means that surface configuration achieved by the backfilling and grading of the ''mined'' areas * * *.''

At § 22–3–3(u) (2), the definition of ''surface mine,'' ''surface-mining'' or ''surface-mining operations'' is amended by deleting the word ''may'' in the sentence immediately before subdivision (i), and replacing that word with the word ''does.'' As amended, the sentence reads: ''Surface-mining does not include any of the following: * * *.''

At § 22–3–3(y), the definition of ''lands eligible for remining'' is amended in the second sentence by deleting the word ''may'' and adding in its place the word ''do.'' As amended, the sentence reads: ''Surface-mining operations on lands eligible for remining ''do'' not affect the eligibility * * *.''

2. W.Va. Code 22–3–13 General environmental protection performance standards for surface mining; variances.

At § 22–3–13(c)(3), concerning mountaintop removal mining operations, the list of approvable postmining land uses is amended as follows. In the first sentence, the word ''woodland'' is deleted, the words ''commercial forestry'' are added, the words ''or fish and wildlife habitat and recreation lands use'' are deleted, the word ''facility'' and the words ''including recreational uses'' are added. As amended, the sentence reads as follows: ''In cases where an industrial, commercial, agricultural, commercial forestry, residential, public facility including recreational uses is proposed for the postmining use of the affected land * * *.''

In addition, a new subdivision § 22–3–13(c)(3)(iii) is added to read as follows. ''(iii) obtainable according to data regarding expected need and market.'' The previously existing subdivision (iii) is renumbered as subdivision (iv), and so on.

3. W.Va. Code 22–3–23 Release of bond or deposits; application; notice; duties of director; public hearings; final maps on grade release.

At subsection § 22–3–23(c), a new subdivision (c)(1) is added to read as follows. ''(1) For all operations except those with an approved variance from approximate original contour:'' Previously existing subdivisions (c)(1), (2), and (3) have been relettered as (c)(1)(A), (B), and (C). As amended, § 22–3–23(c)(1) applies only to operations that do not have an approved variance from the AOC requirements.

New subsection § 22–3–23(c)(2) is added to specify the bond release requirements that apply only to operations with an approved variance from the AOC requirements.

B. House Bill 4223

1. CSR 38–2–2.31. Definition of commercial forestry and forestry. This new definition is added to read as follows.

2.31.a. Commercial Forestry, as used in Subsection 7.4 of this rule, means a long-term postmining land use designed to accomplish the following: (1) Achieve greater forest productivity than that found on the mine site before mining; (2) Minimize erosion and/or sediment yield and serve the hydrologic functions of infiltrating, holding, and yielding water commonly found in undisturbed forests; (3) Result in biodiversity by facilitating rapid recruitment of native species of plants and animals via the process of natural succession; (4) Result in a premium forest that will thrive under stressful conditions; and (5) Result in landscape, vegetation and water resources that create habitat for forest-dwelling wildlife.

2.31.b. Forestry, as used in Subsection 7.4 of this rule, means a long-term postmining land use designed to accomplish the following: (1) Achieve forest productivity equal to that found on the mine site before mining; (2) Minimize erosion and/or sediment yield and serve the hydrologic functions of infiltrating, holding, and yielding water commonly found in undisturbed forests; (3) Result in biodiversity by facilitating rapid recruitment of native species of plants and animals via the process of natural succession; and (4) Result in landscape, vegetation and water resources that create habitat for forest-dwelling wildlife.

2. CSR 38–2–2.31. Definition of downslope.

This definition is amended by deleting the words ''except in

operations where the entire upper horizon above the lowest coal seam is proposed to be partly or entirely removed.'' As amended, ''downslope'' means the land surface between the projected outcrop of the lowest coal seam being mined along each highwall, or any mining-related construction, and the valley floor.

3. CSR 38–2–2.98. Definition of prospecting.

This definition is amended by deleting the word ''substantial'' before the word ''disturbance'' in the first sentence. The effect of this deletion is that the definition of ''prospecting'' is no longer limited to those activities that cause ''substantial'' disturbance.

4. CSR 38–2–2.123 Definition of substantially disturb.

This definition is amended by deleting the word ''and'' after the words ''significantly impact land,'' and adding in its place the word ''or.'' With this change, substantially disturb means to significantly impact land or water resources.

5. CSR 38–2–2.136 Definition of woodlands.

This definition is deleted.

6. CSR 38–2–3.8.c Structures and support facilities.

This subsection is amended by adding a concluding sentence which reads as follows. ''This exemption shall not apply to new and existing coal waste facilities.''

7. CSR 38–2–3.25 Transfer, assignment, or sale of permit rights and obtaining approval.

This subsection is amended by adding the term ''reinstatement'' in the title of the subsection, and in four locations where the phrase ''transfer, assignment, or sale'' appears. In addition, subdivision 3.25.b. is amended by adding a sentence which states that, ''as a condition of reinstatement, the Director may require a modification to the mining and reclamation plan.'' With this amendment, the provisions of CSR 38–2–3.25 will apply to reinstated permits.

8. CSR 38–2–7.2.i Commercial woodland.

This provision is amended by deleting the word ''woodland'' from the land use category ''commercial woodland,'' and adding in its place the word ''forestry.'' The effect of this change is that ''commercial forestry'' is where forest cover is managed for commercial production of timber.

9. CSR 38–2–7.3 Criteria for approving alternative postmining use of land.

New subdivision 7.3.c. is added to provide that: ''A change in postmining land use to grassland uses such as rangeland and/or hayland or pasture is prohibited on operations that obtain an approximate original contour variance described in WV Code § 22–3–13(b)(25)(c). Provided, however, That this subdivision is not effective until Sections 7.4 and 7.5 of this rule are approved by the federal Office of Surface Mining.''

10. CSR 38–2–7.4 Standards applicable to approximate original contour variance operations with a postmining land use of commercial forestry and forestry.

This provision is new and contains the following subsections:

7.4.a. Applicability. This provision applies to commercial forestry and forestry as defined at CSR 38–2–2.31 (see item B. 1. above).

7.4.b. Requirements. This subsection contains requirements concerning planting and management plan development, oversight procedures, landscape criteria, soil and soil substitutes, soil placement and grading, liming and fertilizing, ground cover vegetation, tree species and compositions, standards of success, and front faces of valley fills.

11. CSR 38–2–7.5 Homestead land use.

This subsection is new and contains the following subdivisions. Subdivision 7.5.a., requires that the minimum area for a homestead shall be at least one-half of the permit area. The remainder of the permit area shall support an alternate AOC variance use.

Subdivision 7.5.b. concerns the terms applicable only to homestead land use.

Subdivision 7.5.c. concerns the eligibility requirements and responsibilities for homesteaders.

Subdivision 7.5.d. concerns the rules for the homestead lottery.

Subdivision 7.5.e. concerns the homestead plan development.

Subdivision 7.5.f. concerns the provisions for financial commitments.

Subdivision 7.5.g. concerns the required elements for all homestead plans.

Subdivision 7.5.h. concerns the construction and conveyance of homestead parcels.

Subdivision 7.5.i. concerns required infrastructure.

Subdivision 7.5.j. concerns soils, soil placement and grading.

Subdivision 7.5.k. concerns requirements for reclamation maps.

Subdivision 7.5.l. concerns homestead village.

Subdivision 7.5.m. concerns community association.

Subdivision 7.5.n. concerns interim homestead management.

Subdivision 7.5.o. concerns bond release.

12. CSR 38–2–14.12. Variance from AOC requirements.

This provision is amended at subdivision 14.12.a.1. to delete the word ''woodlands'' and add in its place the words ''commercial forestry.''

13. CSR 38–2–14.15 Contemporaneous reclamation standards.

This provision is amended at subdivision 14.15.f. concerning variance-permit applications to add a sentence which reads as follows: ''Furthermore, the amount of bond for the operation shall be the maximum per acre specified in WV Code § 22–3–12(c)(1).''

III. Public Comment Procedures

In accordance with the provisions of 30 CFR 732.17(h), OSM is seeking comments, on whether the proposed amendment satisfies the applicable program approval criteria of 30 CFR 732.15. If the amendment is deemed adequate, it will become part of the West Virginia program.

Written Comments

If you submit written or electronic comments on the proposed amendment during the 30-day comment period, they should be specific, should be confined to issues pertinent to the notice, and should explain the reason for your recommendation(s). We may not be able to consider or include in the Administrative Record comments delivered to an address other than the one listed above (see **ADDRESSES**).

Electronic Comments

Please submit Internet comments as an ASCII, Word Perfect, or Word file avoiding the use of special characters and any form of encryption. Please also include ''Attn: SPATS NO. WV–085-FOR'' and your name and return address in your Internet message. If you do not receive a confirmation that we have received your Internet message, contact the Charleston Field office at (304) 347–7158.

Availability of Comments

Our practice is to make comments, including names and home addresses of respondents, available for public review during our regular business hours at the OSM Administrative Record Room (see **ADDRESSES**). Individual respondents may request that we withhold their home address from the rulemaking record, which we will honor to the extent allowable by law. There also may be circumstances in which we would withhold from the rulemaking record a respondent's identity, as allowable by law. If you wish us to withhold your

name and/or address, you must state this prominently at the beginning of your comment. However, we will not consider anonymous comments. We will make all submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, available for public inspection in their entirety.

Public Hearing

If you wish to speak at the public hearing, you should contact the person listed under **FOR FURTHER INFORMATION CONTACT** by 4 p.m. (local time), on May 10, 2000. The location and time of the hearing will be arranged with those persons requesting the hearing. If no one requests an opportunity to speak at the public hearing, the hearing will not be held.

To assist the transcriber and ensure an accurate record, we request, if possible, that each person who testifies at a public hearing provide us with a written copy of his or her testimony. The public hearing will continue on the specified date until all persons scheduled to speak have been heard. If you are in the audience and have not been scheduled to speak and wish to do so, you will be allowed to speak after those who have been scheduled. We will end the hearing after all persons scheduled to speak and persons present in the audience who wish to speak have been heard.

Any disabled individual who has need for a special accommodation to attend a public hearing should contact the individual listed under **FOR FURTHER INFORMATION CONTACT**.

Public Meeting

If only one person requests an opportunity to speak at a hearing, a public meeting, rather than a public hearing, may be held. If you wish to meet with OSM representatives to discuss the proposed amendment, you may request a meeting by contacting the person listed under **FOR FURTHER INFORMATION CONTACT**. All such meetings will be open to the public and, if possible, notices of meetings will be posted at the locations listed under **ADDRESSES**. A written summary of each meeting will be made a part of the Administrative Record.

IV. Procedural Determinations

Executive Order 12866—Regulatory Planning and Review

This rule is exempted from review by the Office of Management and Budget under Executive Order 12866.

Executive Order 12630—Takings

This rule does not have takings implications. This determination is based on the analysis performed for the counterpart federal regulation.

Executive Order 13132—Federalism

This rule does not have federalism implications. SMCRA delineates the roles of the federal and state governments with regard to the regulation of surface coal mining and reclamation operations. One of the purposes of SMCRA is to ''establish a nationwide program to protect society and the environment from the adverse effects of surface coal mining operations.'' Section 503(a)(1) of SMCRA requires that state laws regulating surface coal mining and reclamation operations be ''in accordance with'' the requirements of SMCRA, and section 503(a)(7) requires that state programs contain rules and regulations ''consistent with'' regulations issued by the Secretary pursuant to SMCRA.

Executive Order 12988—Civil Justice Reform

The Department of the Interior has conducted the reviews required by section 3 of Executive Order 12988 and has determined that, to the extent allowed by law, this rule meets the applicable standards of subsections (a) and (b) of that section. However, these standards are not applicable to the actual language of state regulatory programs and program amendments since each such program is drafted and promulgated by a specific state, not by OSM. Under sections 503 and 505 of SMCRA (30 U.S.C. 1253 and 1255) and 30 CFR 730.11, 732.15, and 732.17(h)(10), decisions on proposed state regulatory programs and program amendments submitted by the states must be based solely on a determination of whether the submittal is consistent with SMCRA and its implementing federal regulations and whether the other requirements of 30 CFR Parts 730, 731, and 732 have been met.

National Environmental Policy Act

Section 702(d) of SMCRA (30 U.S.C. 1292(d)) provides that a decision on a proposed state regulatory program provision does not constitute a major federal action within the meaning of section 102(2)(C) of the National Environmental Policy Act (NEPA) (42 U.S.C. 4332(2)(C)). A determination has been made that such decisions are categorically excluded from the NEPA process (516 DM 8.4.A).

Paperwork Reduction Act

This rule does not contain information collection requirements that require approval by the Office of Management and Budget under the Paperwork Reduction Act (44 U.S.C. 3507 *et seq.*).

Regulatory Flexibility Act

The Department of the Interior has determined that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). The state submittal which is the subject of this rule is based upon counterpart federal regulations for which an economic analysis was prepared and certification made that such regulations would not have a significant economic effect upon a substantial number of small entities.

Accordingly, this rule will ensure that existing requirements previously promulgated by OSM will be implemented by the state. In making the determination as to whether this rule would have a significant economic impact, the Department relied upon the data and assumptions for the counterpart federal regulation.

Small Business Regulatory Enforcement Fairness Act

This rule is not a major rule under 5 U.S.C. 804(2), the Small Business Regulatory Enforcement Fairness Act. This rule:

a. Does not have an annual effect on the economy of $100 million.

b. Will not cause a major increase in costs or prices for consumers, individual industries, federal, state, or local government agencies, or geographic regions.

c. Does not have significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of U.S. based enterprises to compete with foreign-based enterprises.

This determination is based upon the fact that the state submittal which is the subject of this rule is based upon counterpart federal regulations for which an analysis was prepared and a determination made that the federal regulation was not considered a major rule.

Unfunded Mandates

This rule will not impose a cost of $100 million or more in any given year on any governmental entity or the private sector.

List of Subjects in 30 CFR Part 948

Intergovernmental relations, Surface mining, Underground mining.

Dated: April 7, 2000.

John A. Holbrook,

Acting Regional Director, Appalachian Regional Coordinating Center.

[FR Doc. 00–10278 Filed 4–24–00; 8:45 am]

BILLING CODE 4310–05–P

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 117

[CGD01–99–070]

RIN 2115–AE47

Drawbridge Operation Regulations; Westchester Creek, Bronx River, and Hutchinson River, NY

AGENCY: Coast Guard, DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Coast Guard proposes to change the operating rules for three New York City bridges; the Bruckner Boulevard/Unionport Bridge, at mile 1.7, across Westchester Creek at the Bronx, the Bruckner Boulevard/Eastern Boulevard Bridge, mile 1.1, across the Bronx River at the Bronx, and the Hutchinson River Parkway Bridge, mile 0.9, across the Hutchinson River, at the Bronx, all in New York. The bridge owner asked the Coast Guard to change the regulations to require a two-hour advance notice for openings. This action is expected to relieve the owner of the bridge from the requirement to crew each bridge at all times by using a roving crew of drawtenders and still meet the reasonable needs of Navigation.

DATES: Comments must reach the Coast Guard on or before June 26, 2000.

ADDRESSES: You may mail comments to Commander (obr), First Coast Guard District, Bridge Branch, at 408 Atlantic Avenue, Boston, MA. 02110–3350, or deliver them to the same address between 7 a.m. and 3 p.m., Monday through Friday, except Federal holidays. The telephone number is (617) 223–8364. The First Coast Guard District, Bridge Branch, maintains the public docket for this rulemaking. Comments and material received from the public, as well as documents indicated in this preamble as being available in the docket, will become part of this docket and will be available for inspection or copying at the First Coast Guard District, Bridge Branch, 7 a.m. to 3 p.m., Monday through Friday, except, Federal holidays.

FOR FURTHER INFORMATION CONTACT: Mr. John McDonald, Project Officer, First Coast Guard District, (617) 223–8364.

SUPPLEMENTARY INFORMATION:

Request for Comments

We encourage you to participate in this rulemaking by submitting comments or related material. If you do so, please include your name and address, identify the docket number for this rulemaking (CGD01–99–070), indicate the specific section of this document to which each comment applies, and give the reason for each comment. Please submit all comments and related material in an unbound format, no larger than 8½ by 11 inches, suitable for copying. If you would like to know if they reached us, please enclose a stamped, self-addressed postcard or envelope. We will consider all comments and material received during the comment period. We may change this proposed rule in view of them.

Public Meeting

We do not now plan to hold a public meeting. But you may submit a request for a meeting by writing to the First Coast Guard District, Bridge Branch, at the address under **ADDRESSES** explaining why one would be beneficial. If we determine that one would aid this rulemaking, we will hold one at a time and place announced by a later notice in the **Federal Register**.

Background and Purpose

Bruckner Boulevard/Eastern Boulevard Bridge

The Bruckner Boulevard/Eastern Boulevard Bridge, mile 1.1, across the Bronx River at the Bronx, has a vertical clearance of 27 feet at mean high water and 34 feet at mean low water. The existing operating regulations for the Bruckner Boulevard/Eastern Boulevard Bridge in 33 CFR 117.771(a) require the bridge to open on signal if at least a four-hour advance notice is given to the NYCDOT Radio Hotline, or NYCDOT Bridge Operations Office. From 7 a.m. to 9 a.m. and 4 p.m. to 6 p.m., Monday through Friday, the bridge need not open for vessel traffic.

Hutchinson River Parkway Bridge

The Hutchinson River Parkway Bridge, mile 0.9, across the Hutchinson River at the Bronx, has a vertical clearance of 30 feet at mean high water and 38 feet at mean low water. The existing operating regulations for the Hutchinson River Parkway Bridge in 33 CFR 117.793(b) require the bridge to open on signal if at least a six-hour advance notice is given.

Bruckner Boulevard/Unionport Bridge

The Bruckner Boulevard/Unionport Bridge, at mile 1.7, across Westchester Creek at the Bronx, has a vertical clearance of 14 feet at mean high water and 21 feet at mean low water. The existing operating regulations for the Bruckner Boulevard Bridge in 33 CFR 117.815 require the bridge to open on signal; except that, from 7 a.m. to 9 a.m. and 4 p.m. to 6 p.m., Monday through Friday, the draw need not open for vessel traffic.

The owner of the bridges, the New York City Department of Transportation (NYCDOT), submitted bridge opening log data to the Coast Guard for review. The bridge owner plans to operate all three bridges with multiple crews of drawtenders after a two-hour advance notice is given. The two-hour advance notice for all three bridges will make the advance notice requirement consistent for each bridge allowing sufficient time for the roving crews of drawtenders to operate all three bridges. The closed periods 7 a.m. to 9 a.m. and 4 p.m. to 6 p.m., Monday through Friday, for Bruckner Boulevard/Unionport Bridge and Bruckner Boulevard/Eastern Boulevard Bridge will not be changed by this rule. The number of bridge openings at the three bridges are as follows:

	1998	1999
Bruckner/Unionport	429	516
Bruckner/Eastern	0	0
Hutchinson Parkway	75	129

The Coast Guard believes that the owner's proposal to use multiple crews of roving drawtenders to operate these bridges will meet the needs of navigation. The bridge owner will provide additional crews of drawtenders in the event the number of bridge opening requests increases.

The Coast Guard believes that the two-hour advance notice is reasonable because the bridges will still open on signal, except during the closed periods at Bruckner Boulevard/Unionport Bridge and Bruckner Boulevard/Eastern Boulevard Bridge, provided the two-hour notice is given. The commercial vessel transits on the Bronx River, Hutchinson River, Eastchester Creek and Westchester Creek are scheduled in advance. Providing a two-hour notice for bridge openings should not prevent vessels from transiting the waterway in a timely manner.

The advance notice time will be reduced at the Bruckner Boulevard/Eastern Boulevard and the Hutchinson River Parkway bridges from four-hour and six-hour advance notice,

respectively to two-hours advance notice for both bridges.

Discussion of Proposal

The Coast Guard proposed to revise the operating regulations for the Bronx River, Hutchinson River (Eastchester Creek) and Westchester Creek as follows:

Bruckner Boulevard/Eastern Boulevard Bridge

Revise the operating regulations at 33 CFR 117.771(a) for the Bruckner Boulevard/Eastern Boulevard Bridge, mile 1.1, across the Bronx River, to require that the draw shall open on signal if at least a two-hour advance notice is given. The requirement that the draw need not open for vessel traffic, 7 a.m. to 9 a.m. and 4 p.m. to 6 p.m., Monday through Friday, will remain unchanged by this action.

Hutchinson River Parkway Bridge

Revise the operating regulations at 33 CFR 117.793(b) for the Hutchinson Parkway Bridge, mile 0.9, across the Hutchinson River, to require that the draw shall open on signal if at least a two-hour advance notice is given.

Bruckner Boulevard/Unionport Bridge

Revise the operating regulations at 33 CFR 117.815 for the Bruckner Boulevard/Unionport Bridge, mile 1.7, across Westchester Creek, to add the requirement that the draw open on signal if at least a two-hour advance notice be given. The requirement that the draw need not open for vessel traffic, 7 a.m. to 9 a.m. and 4 p.m. to 6 p.m., Monday through Friday, will remain unchanged by this action.

Requests for bridge openings may be given to the New York City Department of Transportation (NYCDOT) Radio Hotline or NYCDOT Bridge Operations Office.

This consistent two-hour advance notice requirement will allow the bridge owner to utilize multiple crews of drawtenders to open the bridges and still meet the reasonable needs of navigation.

The Coast Guard believes this roving crew concept will be successful because commercial vessel transits are scheduled in advance. Providing a two-hour notice for bridge openings should not prevent vessels from transiting the waterway in a timely manner.

Regulatory Evaluation

This proposed rule is not a ''significant regulatory action'' under section 3(f) of Executive Order 12866 and does not require an assessment of potential costs and benefits under 6(a)(3) of that Order. The Office of Management and Budget has not reviewed it under that Order. It is not significant under the regulatory policies and procedures of the Department of Transportation (DOT) (44 FR 11040, Feb. 26, 1979).

We expect the economic impact of this proposed rule to be so minimal that a full Regulatory Evaluation, under paragraph 10e of the regulatory policies and procedures of DOT, is unnecessary. This conclusion is based on the fact that the bridges will still open for marine traffic provided a two-hour notice is given. Commercial transits are scheduled in advance. Providing a two-hour advance notice should not prevent vessels from transiting in a timely manner.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601–612), we considered whether this proposed rule would have a significant economic impact on a substantial number of small entities. The term ''small entities'' comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000.

The Coast Guard certifies under section 5 U.S.C. 605(b), that this proposed rule would not have a significant economic impact on a substantial number of small entities. This conclusion is based upon the fact that the bridges will still open for all vessel traffic after a two-hour advance notice is given. Commercial vessel transits are scheduled in advance. Providing a two-hour notice for bridge openings should not prevent vessels from transiting the waterway in a timely manner.

If you think that your business, organization, or governmental jurisdiction qualifies as a small entity and that this rule would have a significant economic impact on it, please submit a comment (see ADDRESSES) explaining why you think it qualifies and how and to what degree this rule would economically affect it.

Collection of Information

This proposed rule would call for no new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520.).

Federalism

We have analyzed this proposed rule under E.O. 13132 and have determined that this rule does not have implications for federalism under that Order.

Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) governs the issuance of Federal regulations that require unfunded mandates. An unfunded mandate is a regulation that requires a State, local, or tribal government or the private sector to incur direct costs without the Federal Government's having first provided the funds to pay those costs. This proposed rule would not impose an unfunded mandate.

Taking of Private Property

This proposed rule would not effect a taking of private property or otherwise have taking implications under E.O. 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights.

Civil Justice Reform

This proposed rule meets applicable standards in sections 3(a) and 3(b)(2) of E.O. 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden.

Protection of Children

We have analyzed this proposed rule under E.O. 13045, Protection of Children from Environmental Health Risks and Safety Risks. This rule is not an economically significant rule and does not concern an environmental risk to health or risk to safety that may disproportionately affect children.

Environment

We considered the environmental impact of this proposed rule and concluded that, under figure 2–1, paragraph (32)(e), of Commandant Instruction M16475.1C, this proposed rule is categorically excluded from further environmental documentation because promulgation of drawbridge regulations have been found not to have a significant effect on the environment. A ''Categorical Exclusion Determination'' is available in the docket where indicated under **ADDRESSES**.

List of Subjects in 33 CFR Part 117

Bridges.

Regulations

For the reasons set out in the preamble, the Coast Guard proposes to amend 33 CFR part 117 as follows:

PART 117—DRAWBRIDGE OPERATION REGULATIONS

1. The authority citation for part 117 continues to read as follows:

Authority: 33 U.S.C. 499; 49 CFR 1.46; 33 CFR 1.05–1(g); section 117.255 also issued

under the authority of Pub. L. 102–587, 106 Stat. 5039.

2. Section 117.771(a) is revised to read as follows:

§ 117.771 Bronx River.

(a) The draw of the Bruckner Boulevard Bridge, mile 1.1, at the Bronx, New York, shall open on signal if at least a two-hour advance notice is given to the New York City Department of Transportation (NYCDOT) Radio Hotline, or the NYCDOT Bridge Operations Office. From 7 a.m. to 9 a.m. and 4 p.m. to 6 p.m., Monday through Friday, the bridge need not be opened for the passage of vessels.

* * * * *

3. Section 117.793(b) is revised to read as follows:

§ 117.793 Hutchinson River (Eastchester Creek).

* * * * *

(b) The draw of the Hutchinson River Parkway Bridge, mile 0.9, at the Bronx, New York shall open on signal if at least a two-hour notice is given to the New York City Department of Transportation (NYCDOT) Radio Hotline, or the NYCDOT Bridge Operations Office.

* * * * *

4. Section 117.815 is revised to read as follows:

§ 117.815 Westchester Creek.

The draw of the Bruckner Boulevard/Unionport Bridge, mile 1.7, at the Bronx, New York, shall open on signal if at least a two-hour advance notice is given to the New York City Department of Transportation (NYCDOT) radio hotline, or the NYCDOT Bridge Operations Office. The draw need not be opened for vessel traffic from 7 a.m. to 9 a.m. and 4 p.m. to 6 p.m., Monday through Friday. The owner of the bridge shall provide clearance gauges according to the provisions of § 118.160 of this chapter.

Dated: April 12, 2000.

Robert F. Duncan,

Captain, U.S. Coast Guard, Acting Commander, First Coast Guard District.

[FR Doc. 00–10266 Filed 4–24–00; 8:45 am]

BILLING CODE 4910–15–U

NATIONAL ARCHIVES AND RECORDS ADMINISTRATION

36 CFR Part 1258

RIN 3095–AA87

NARA Reproduction Fee Schedule

AGENCY: National Archives and Records Administration (NARA).

ACTION: Notice of proposed rulemaking.

SUMMARY: NARA proposes to revise its schedule of fees for reproduction of records and other materials in the custody of the Archivist of the United States. This proposed rule covers reproduction of Federal records created by other agencies that are in the National Archives of the United States, donated historical materials, Presidential records, Nixon Presidential historical materials, certain Federal agency records in NARA Federal records centers, and records filed with the Office of the Federal Register. The fees are being changed to reflect current costs of providing the reproductions. This rule will affect members of the public and Federal agencies who order reproductions from NARA.

DATES: Comments must be received by June 26, 2000.

ADDRESSES: Submit comments to the Regulation Comment Desk (NPLN), Room 4100, National Archives at College Park, 8601 Adelphi Road, College Park, MD 20740–6001. Comments may also be faxed to (301)713–7270.

FOR FURTHER INFORMATION CONTACT: Nancy Allard on (301)713–7360.

SUPPLEMENTARY INFORMATION:

Background

The fees for reproduction of records in 36 CFR Part 1258 are set under the Archivist's authority in 44 U.S.C. 2116(c). That statute requires that, to the extent possible, NARA recover the actual cost of making copies of records and other materials transferred to the custody of the Archivist of the United States. In determining these costs, NARA has considered only the order handling, materials and equipment, shipping, and the labor costs directly associated with making the reproduction.

NARA last revised the reproduction fee schedule in 1997 on the basis of a cost study conducted in 1995 and 1996. Since 1997, NARA costs have increased because of higher materials and shipping costs and mandatory cost of living adjustments to staff salaries. Despite these increases, the proposed fees for many products fulfilled by mail order will remain the same or increase only slightly. The following sections of this **SUPPLEMENTARY INFORMATION** discuss where we are proposing significant changes in fees.

Fees for Self-service Copies

Fees for self-service paper-to-paper and microfilm-to-paper copies, which represent approximately 46 percent of our reproduction volume, must increase by 5 cents each to recover NARA's costs. This is the first such increase in 10 years. The fee for self-service paper-to-paper copies will be 15 cents per copy. The fee for self-service microfilm-to-paper copies will be 30 cents per copy.

Electrostatic and Microfilm Orders at Washington, DC, Area Facilities

We are discontinuing ''block'' pricing for standard electrostatic copy and camera microfilm image reproduction orders at Washington, DC, area facilities. With this pricing, the customer paid one fee for the initial block of copies and a separate fee for each additional block of copies. Unit pricing (per page) continued to be used at all regional facilities and Presidential libraries. This pricing structure, imposed with the July 1997 revision of the fee schedule, was intended to reduce the amount of time spent by archival staff estimating the number of pages to be copied when preparing quotes for researchers and to reduce the amount of time spent by the Trust Fund staff in processing refunds for overestimated copy counts and in pursuing debt collection for underestimated copy counts. However, after years of unit pricing, our customers found block pricing to be confusing. Staff members found that they were now dependent upon charts to calculate quotes and the block sizes were not large enough to significantly reduce the need for accurate page counts. Finally, NARA's new order fulfillment system will not support block pricing without extensive, and expensive, customization that would be passed on to customers.

We propose to revert to unit pricing for these products nationwide. The proposed unit pricing for both electrostatic copies (50 cents per copy) and camera microfilm images (70 cents per image) is not changed from the 1997 unit cost on which the block prices were based. For camera microfilm images, there will be no significant change in cost. Most camera microfilm customers will pay the same or slightly less than they pay with block pricing.

The proposed pricing for electrostatic copies signifies no change in fee for 90 percent of the copies sold nationwide. Customers who ordered copies from the two NARA archival facilities in the Washington, DC, area (10 percent of the total copies sold nationwide) are the only customers affected by the proposed return to unit pricing. Under block pricing, some orders had a discounted per unit cost because of the way that the blocks were priced. Generally, only customers with larger orders (more than 40 copies) will have an increase in the cost of their orders.

Fixed-fee Orders

NARA uses specialized forms (NATF–80 series of forms) to handle requests for reproductions of certain types of records with high reference volume. Each of these forms is used as part of a two-step process: (1) To search for the requested file and, if found, make copies; and (2) to bill the requesting researcher for the copies of the records when the search is successful. Approximately 125,000 of these requests are submitted to NARA each year, of which 76,000 result in reproductions.

We are making three changes in this fixed fee order program. First, we propose to discontinue the practice of selecting documents and providing only partial files. Now all fixed fee orders will include the entire file. The most dramatic impact of this change will be that people who order military pension files will receive much larger full files that average 105 pages instead of a selection of 14–20 pages. When searches based on the current NATF Form 80, Order for Copies of Veterans Records, are successful, NARA's practice has been to select and reproduce up to 20 pages which would be of most use for genealogical research from the file. In order to obtain a copy of the full file, the customer has had to prepare and send a separate request for the remaining documents in the file, which was charged at the per-page price. While full bounty land warrant application records and military service records generally fall within the 20-page limit, the average military pension file is 105 pages.

Our intent is to provide all customers with access to the complete record responsive to their request. The selection process is not consistent with NARA's overall reference practices, and misleads some researchers that the selected pages constitute the entire file. Increasing numbers of genealogical researchers have recognized that the selected documents do not meet their needs. Receipt of copies of selected records often leads to requests for the remaining pages in a file. This results in many researchers submitting two separate requests, doubling both the researcher's and NARA's time spent on the reference transaction and increasing potential damage to the fragile records through the more frequent handling.

The new procedure will immediately give the researcher all the information about the soldier or sailor contained in the file. While the 14 to 20 pages that were normally selected contained much useful biographical information (such as general statement of service, the names of wives and children, birth dates, and death dates), they by no means tell the full story of a pensioner's case. Medical information about continuing ailments resulting from war wounds or illnesses and prolonged battles to obtain benefits are also of great interest to family historians. These additional records round out the portrait of the veteran and his family.

Second, we are replacing the NATF Form 80, Order for Copies of Veterans Records, with two separate new forms to facilitate more efficient service. NATF Form 85 (Order for Copies of Federal Pension or Bounty Land Warrant Applications) and NATF Form 86 (Order for Copies of Military Service Records) will replace NATF Form 80. This change will also help researchers to understand the distinctions among the three types of records. The military service records (ordered on NATF Form 86), the bounty land warrant application files (NATF Form 85), and the pension files (also on NATF Form 85) share some of the same basic facts about the person. But military service files rarely contain personal information other than a physical description of the soldier and/or medical information. They document the soldier's movements during the war. Bounty land warrant applications and pension files contain basically the same type of information because they were applications for the same type of benefit. The soldier or widow provided a statement of service that would qualify them for the bounty or the pension. The claim may or may not include information about when the soldier was married, the names and ages of children, etc. However, the pension files are on average larger since they often cover a longer period of government payments and they often have more supporting documents over time. In addition, the bounty land warrant application files start after the Revolutionary War and end in 1855. Bounty land applications for the Revolutionary War are combined in the pension files and do not exist as a separate series. The average Revolutionary War pension file is 40 pages, including the bounty land warrant application. Unlike the other pension files, Revolutionary War pension files are only available on microfilm, which contributes to a higher labor cost for reproduction. Each type of file is different because it was created for a different purpose, at a different time, and in response to different laws with different requirements.

In the third change, the fees for fixed fee orders will increase for the first time since 1991. In past fee schedules, NARA has set a uniform fee for the NATF Forms 80, 81, 83 and 84 that represents a blending of the actual costs for providing those orders. In this fee schedule we propose to set the fees for each type of order separately to reflect the cost of each individual type of order. We specifically invite your comments on this change.

By pricing each type of file separately, the ship passenger arrival records (NATF Form 81) and the full bounty land warrant application files (NATF Form 85) are $17.25, while the land records on the NATF Form 84 are $17.75. Federal Census orders (NATF Form 82) and Eastern Cherokee applications to the Court of Claims (NATF Form 83) are $17.50. The fee for copies of full military service records (NATF Form 86) will be $17.00 and the fee for copies of full federal pension files (NATF Form 85) will be $40.

If we set blended fees, the fee for orders on NATF Forms 81, 82, 83, 84, and 86 would be $17.50. The fee for orders for full bounty land warrants on NATF Form 85 would also be $17.50. The fee for orders for federal pension files on NATF Form 85 would be $40.00 under either the blended pricing or the individual pricing approach.

Finally, we propose to make this fee schedule effective September 1, 2000, as we indicate in proposed § 1258.16.

Other Changes to Part 1258

We have rewritten Part 1258 in plain language in accordance with the Presidential Memorandum of June 1, 1998, Plain Language in Government Writing. No substantive changes have been made to NARA's current policies in proposed § § 1258.1, 1258.2, 1258.6, 1258.8, 1258.10, and 1258.14, although existing § § 1258.4 and 1258.6 have been combined in proposed § 1258.6.

Paperwork Reduction Act

NATF Forms 81 through 86 in this proposed rule have been approved by the Office of Management and Budget under the Paperwork Reduction Act and bear current approval numbers on the face of the forms.

This proposed rule is a significant regulatory action for purposes of Executive Order 12866 of September 30, 1993, and has been reviewed by the Office of Management and Budget. This proposed rule does not have federalism implications. As required by the Regulatory Flexibility Act, it is hereby certified that this rule will not have a significant impact on a substantial number of small entities because the affected public is primarily individuals.

List of Subjects in 36 CFR Part 1258

Archives and records.

For the reasons set forth in the preamble, NARA proposes to revise Part

1258 of title 36, Code of Federal Regulations, to read as follows:

PART 1258—FEES

Sec.

Authority: 44 U.S.C. 2116(c) and 2307.

§ 1258.1 What is the authority for this part?

(a) 44 U.S.C. 2116(c) authorizes NARA to charge a fee for making or authenticating copies or reproductions of materials transferred to the Archivist's custody.

(b) 44 U.S.C. 2307 authorizes the Archivist of the United States, as Chairman of the National Archives Trust Fund Board, to prepare and publish special works and collections of sources and to prepare, duplicate, edit, and release historical photographic materials and sound recordings and sell those publications and releases at a price that will cover their cost, plus 10 percent.

§ 1258.2 What does the NARA reproduction fee schedule cover?

The NARA reproduction fee schedule in § 1258.12 covers reproduction of:

(a) NARA archival records, donated historical materials, Presidential records, and Nixon Presidential historical materials except as otherwise provided in § § 1258.4 and 1258.6. Some reproduction services listed in § 1258.12 may not be available at all NARA facilities;

(b) Other Federal records stored in NARA Federal records centers, except when NARA and the agency that transferred the records have agreed to apply that agency's fee schedule; and

(c) Records filed with the Office of the Federal Register.

§ 1258.4 What reproductions are not covered by the NARA fee schedule?

The following categories are not covered by the NARA fee schedule in § 1258.12.

(a) Still photography, including aerial film, and oversize maps and drawings. Information on the availability and prices of reproductions of records held in the Special Media Archives Services Division (NWCS), 8601 Adelphi Rd., College Park, MD 20740–6001, and in the Presidential libraries and regional archives (see 36 CFR 1253.3 and 36 CFR 1253.7 for addresses) may be obtained from the unit which has the original records.

(b) Motion picture, sound recording, and video holdings of the National Archives and Presidential libraries. Information on the availability of and prices for reproduction of these materials are available from the Special Media Archives Services Division (NWCS), 8601 Adelphi Rd., Room 3340, College Park, MD 20740–6001, or from the Presidential library which has such materials (see 36 CFR 1253.3 for addresses).

(c) Electronic records. Information on the availability of and prices for duplication are available from the Electronic and Special Media Records Services Division (NWME), 8601 Adelphi Rd., Room 5320, College Park, MD 20740–6001, or from the Presidential library which has such materials (see 36 CFR 1253.3 for addresses).

(d) Reproduction of the following types of records using the specified order form:

Type of record and order form	Price
(1) Passenger arrival lists (order form NATF Form 81)	$17.25
(2) Federal Census requests (order form NATF Form 82)	17.50
(3) Eastern Cherokee applications to the Court of Claims (order form NATF Form 83)	17.50
(4) Land entry records (order form NATF 84)	17.75
(5) Bounty land warrant application files (order form NATF Form 85)	17.25
(6) Pension files more than 75 years old (order form NATF Form 85)	40
(7) Military service files more than 75 years old (order form NATF Form 86)	17

(e) National Archives Trust Fund Board publications, including microfilm publications. Prices are available from the Customer Service Center (NWCC2), 8601 Adelphi Rd., Room 1000, College Park, MD 20740–6001.

(f) Reproductions of NARA operational records made in response to FOIA requests under part 1250 of this chapter.

(g) Orders for expedited service (''rush'' orders) for reproduction of still pictures and motion picture and video recordings among the holdings of a Presidential library. Orders may be accepted on an expedited basis by the library when the library determines that sufficient personnel are available to handle such orders or that the NARA contractor making the reproduction can provide the service. Rush orders are subject to a surcharge to cover the additional cost of providing expedited service.

(h) Orders requiring additional expense to meet unusual customer specifications such as the use of special techniques to make a photographic copy more legible than the original document, or unusual format or background requirement for negative microfilm. Fees for these orders are computed for each order.

§ 1258.6 When does NARA provide reproductions without charge?

NARA does not charge a fee for reproduction or certification in the instances described in this section, if the reproduction is not a color reproduction. Color reproductions are furnished to the public and the Government only on a fee basis.

(a) When NARA furnishes copies of documents to other elements of the Federal Government. However, a fee may be charged if the appropriate director determines that the service cannot be performed without reimbursement;

(b) When NARA wishes to disseminate information about its activities to the general public through press, radio, television, and newsreel representatives;

(c) When the reproduction is to furnish the donor of a document or other gift with a copy of the original;

(d) When the reproduction is for individuals or associations having official voluntary or cooperative relations with NARA in its work;

(e) When the reproduction is for a foreign, State, or local government or an international agency and furnishing it without charge is an appropriate courtesy;

(f) For records of other Federal agencies in NARA Federal records centers only:

(1) When furnishing the service free conforms to generally established

business custom, such as furnishing personal reference data to prospective employers of former Government employees;

(2) When the reproduction of not more than one copy of the document is required to obtain from the Government financial benefits to which the requesting person may be entitled (e.g., veterans or their dependents, employees with workmen's compensation claims, or persons insured by the Government);

(3) When the reproduction of not more than one copy of a hearing or other formal proceeding involving security requirements for Federal employment is requested by a person directly concerned in the hearing or proceeding; and

(4) When the reproduction of not more than one copy of a document is for a person who has been required to furnish a personal document to the Government (e.g., a birth certificate required to be given to an agency where the original cannot be returned to the individual).

§ 1258.8 Who pays to have a copy negative made?

Requests for photographs of materials for which no copy negative is on file are handled as follows:

(a) The customer is charged to make the copy negative, except in cases where NARA wishes to retain the negative for its own use.

(b) When no fee is charged the negative becomes the property of NARA. When a fee is charged the negative becomes the property of the customer.

§ 1258.10 What is NARA's mail order policy?

(a) There is a minimum fee of $10.00 per order for reproductions that are sent by mail to the customer.

(b) Orders to addresses in the United States are sent either first class or UPS depending on the weight of the order and availability of UPS service. When a customer requests special mailing services (such as Express Mail or registered mail) and/or shipment to a foreign address, the cost of the special service and/or additional postage for foreign mail is added to the cost of the reproductions.

§ 1258.12 NARA fee schedule.

(a) Certification: $6.

(b) Electrostatic copying (in order to preserve certain records which are in poor physical condition, NARA may restrict customers to photographic or microfilm copies instead of electrostatic copies):

Service	Fee
(1) Paper-to-paper copies (up to and including 11 in. by 17 in.) made by the customer on a NARA self-service copier.	$0.15 per copy.
(2) Paper-to-paper copies (up to and including 11 in. by 17 in.) made by NARA staff	$0.50 per copy.
(3) Oversized electrostatic copies	$2.70 per linear foot.
(4) Electrostatic copies (22 in. by 34 in.)	$2.70 per copy.
(5) Microfilm or microfiche to paper copies made by the customer on a NARA self-service copier	$0.30 per copy.
(6) Microfilm or microfiche to paper copies made by NARA staff	$1.90 per copy.

(c) Original negative microfilm (paper-to-microfilm): $0.70 per image.

(d) Diazo microfiche duplication: $2.50 per fiche.

(e) Self-service video copying in the Motion Picture, Sound and Video Research Room:

Service	Fee
(1) Initial 90-min use of video copying station with 120-minute videocassette	$9.75.
(2) Additional 90-minute use of video copying station with no videocassette	$6.25.
(3) Blank 120-minute VHS videocassette	$3.50.

(f) Self-service Polaroid prints: $5.75 per print.

(g) Unlisted processes: For reproductions not covered by this fee schedule, see also § 1258.4. Fees for other reproduction processes are computed upon request.

§ 1258.14 What is NARA's payment policy?

(a) *Form of payment.* Fees may be paid in cash, by check or money order made payable to the National Archives Trust Fund, or by selected credit cards. Payments from outside the United States must be made by international money order payable in U.S. dollars or a check drawn on a U.S. bank.

(b) *Timing.* Fees must be paid in advance except when the appropriate director approves a request for handling them on an account receivable basis. Purchasers with special billing requirements must state them when placing orders and must complete any special forms for NARA approval in advance.

§ 1258.16 Effective date.

The fees in this part are effective on September 1, 2000.

Dated: February 28, 2000.

John W. Carlin,

Archivist of the United States.

[FR Doc. 00–10248 Filed 4–24–00; 8:45 am]

BILLING CODE 7515–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 22

[FCC 97–110]

Cellular Service and Other Commercial Mobile Radio Services in the Gulf of Mexico

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: The Federal Communications Commission proposes changes to its cellular service rules for the Gulf of Mexico Service Area (''GMSA'') and proposes licensing and service rules for operations in the Gulf of Mexico by other commercial mobile radio service providers. The proposed rule changes should facilitate ubiquitous cellular service along the coast of the Gulf of Mexico and minimize interference disputes between terrestrial and water-based carriers.

DATES: Comments are due on or before May 15, 2000. Reply comments are due on or before May 30, 2000. Written comments by the public on the proposed information collections, are due June 26, 2000. The Office of Management and Budget (''OMB'') must submit written comments on the proposed information collection(s) on or before June 26, 2000.

ADDRESSES: All Comments and reply comments may be filed with Magalie Roman Salas, Office of the Secretary, TW–A306, Federal Communications Commission, 445 12th Street, SW., Washington, D.C. 20554.

FOR FURTHER INFORMATION CONTACT: Davida Grant, Commercial Wireless Division, Wireless Telecommunications Bureau, Federal Communications Commission, 202–418–7050, or via the Internet at *dgrant@fcc.gov.* For additional information concerning the information collection(s) contained in this document, contact Judy Boley at 202–418–0214, or via the Internet at *jboley@fcc.gov.*

SUPPLEMENTARY INFORMATION: We created the Gulf of Mexico Service Area (''GMSA'') in 1983 for the provision of cellular service in the Gulf of Mexico, and two cellular carriers, PetroCom and Bachow/Coastel, currently are providing service. The rules applying to cellular service in the Gulf have been subject to controversy and litigation, however, because of conflicts between the two Gulf licensees and land-based cellular carriers in markets adjacent to the Gulf. These controversies have focused on the water-based licensees' desire to locate their transmitters on land as well as on attempts by land-based licensees to extend their coverage into the Gulf. In addition, the Gulf carriers are subject to unique operational requirements because their transmitters are located on offshore oil and natural gas drilling platforms that move from time to time. Thus, when the platforms are relocated, the carriers must move their transmitters as well, thereby causing the coverage provided by these systems to change.

In 1992,[1] the Commission determined that the boundaries of the Gulf carriers' service areas should be defined by the actual coverage of their cell sites. This approach was the same as the approach applied to land-based cellular systems. Thus, any area where coverage is not provided would be considered unserved area that could be made available for licensing to others. The Gulf carriers appealed this decision to the Court of Appeals, arguing that a coverage-based service area definition should not be applied to them, because the platforms on which their transmitters operate move from location to location, unlike land-based sites. The Gulf carriers contended that they should be allowed to operate throughout the Gulf without regard to the location of their sites at any given time.

In 1994, in response to the Gulf carriers' concerns, the Court of Appeals vacated the Commission's service area definition insofar as it applies to the Gulf licensees. The court held that the Commission failed to take the Gulf carriers' arguments into account, and that the Commission had failed to adequately support its decision to apply the same rules to water-based carriers as it did to land-based carriers in light of the operational challenges faced by the Gulf carriers. In this proposed rulemaking, we propose a new approach to licensing in the Gulf to address the court's concerns. Specifically, we propose to address the remand issue by dividing the GMSA into two areas: a GMSA Exclusive Zone and a GMSA Coastal Zone. The Exclusive Zone would consist of the majority of the GMSA, except for coastal waters from the shoreline to approximately 12 miles offshore, which would be defined as the Coastal Zone.

In the proposed Exclusive Zone, the existing Gulf carriers would be licensed on an exclusive basis and would be permitted to move their transmitters freely and modify their coverage without having uncovered areas deemed ''unserved.'' Areas within the proposed Coastal Zone would be available for licensing under the Commission's unserved area auction rules. Thus, under this proposal, both Gulf-based and land-based carriers could apply to serve an unserved portion of the Coastal Zone, and could locate sites either on land or on water to do so. Areas with mutually exclusive applications would be subject to auction. We tentatively conclude that this approach will best ensure that customers in coastal areas receive seamless cellular coverage.

Filing Information

Comments and reply comments may be filed with the FCC using the Commission's Electronic Comment Filing System (''ECFS'') or by filing paper copies. *See Electronic Filing of Documents in Rulemaking Proceedings*, 63 FR 24121 (1998). Parties may also submit an electronic comment by Internet e-mail. Parties who choose to file by paper must file an original and four copies of each filing. If you want

[1] In re Amendment of Part 22 of the Commission's Rules to Provide for Filing and Processing of Applications for Unserved Areas in the Cellular Service and to Modify Other Cellular Rules, CC Docket 90–6, Third Report and Order and Memorandum Opinion and Order on Reconsideration, 7 FCC Rcd 7183 (1992).

each Commissioner to receive a copy of your comments, you must file an original plus eleven copies. All filings must be sent to the Commission's Secretary, with Magalie Roman Salas, Office of the Secretary, TW–A306, Federal Communications Commission, 445 12th Street, SW., Washington, DC 20554.

Parties who choose to file by paper should also submit their comments on diskette. A 3.5-inch diskette formatted in an IBM compatible format using Microsoft Word for Windows or compatible software Diskettes should be submitted to: Davida Grant, Federal Communications Commission, Wireless Telecommunications Bureau, 445 12th Street, SW., Room 4C–241, Washington, DC 20554. The diskette should be accompanied by a cover letter and should be submitted in ''read only'' mode. The diskette should be clearly labeled with the commenter's name, proceeding (including the docket number in this case—WT Docket No. 97–112), type of pleading (comments or reply comments), date of submission, and the name of the electronic file on the diskette. The label also should include the following phrase, ''Disk Copy—Not an Original.'' Each diskette should contain only one party's pleadings, perferably in a single electronic file. In addition, commenters must send diskette copies to the Commission's copy contractor, International Transcription Service, Inc., 1231 20th Street, NW., Washington, DC 20036.

In addition to filing comments with the Secretary, a copy of any comments on the information collections contained herein should be submitted to Judy Boley, Federal Communications Commission, Room 1C–804, 445 12th Street, SW., Washington, DC 20554, or via the Internet to *jboley@fcc.gov,* and to Viriginia Huth, OMB Desk Officer, 10236 NEOB, 725 17th Street, NW., Washington, DC 20503 or via the Internet to *vhuth@omb.eop.gov.*

Paperwork Reduction Act

This rulemaking contains proposed information collection(s) subject to the Paperwork Reduction Act of 1995 (''PRA''). As part of its continuing effort to reduce paperwork burden, the Commission invites the general public and other Federal agencies to take this opportunity to comment on the following information collection, as required by the Paperwork Reduction Act of 1995, Public Law 104–13. An agency may not conduct or sponsor a collection of information unless it displays a currently valid control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the Paperwork Reduction Act (PRA) that does not display a valid control number. Comments are requested concerning: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimate; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology.

OMB Control No.: 3060–XXXX.

Title: Notice of Public Information Collection.

Form No.: N/A.

Type of Review: New Collection.

Respondents: Business or other for-profit.

Number of Respondents: 30.

Estimated Time Per Response: 1.25 hour.

Frequency of Response: The frequency will vary. Respondents may apply for unserved territory as it becomes available.

Total Annual Burden: 37.50 hours.

Total Annual Cost: $7,500.

Needs and Uses: Two carriers are authorized to provide cellular service in the Gulf of Mexico. However, due to the transitory nature of their water-based sites and our interference rules, service along coastal areas in the Gulf of Mexico has been unreliable. In this rulemaking, we propose a regulatory licensing scheme to facilitate ubiquitous, reliable cellular coverage along coastal areas. As part of this scheme, we propose to bifurcate the Gulf of Mexico into a Coastal Zone and Exclusive Zone, and allow both water and land-based carriers the opportunity to provide cellular service in the Coastal Zone. Further, we propose to license any unserved areas in the Coastal Zone under our Phase II licensing rules, which require the filing of an application. The information collected pursuant to this collection request will be used to license unserved areas in the Coastal Zone for the provision of cellular service.

List of Subjects in 47 CFR Part 22

Communications common carriers.

Federal Communications Commission.

Magalie Roman Salas,

Secretary.

Rule Changes

For the reasons discussed in the preamble, the Federal Communications Commission proposes to amend 47 CFR Part 22 as follows:

PART 22—PUBLIC MOBILE SERVICES

1. The authority citation for Part 22 continues to read as follows:

Authority: Secs. 4, 303, 48 Stat. 1066, 1083, as amended; 47 U.S.C. 154 and 303.

2. Section 22.99 is amended by adding a definitions in alphabetical order:

§ 22.99 Definitions.

* * * * *

GMSA Coastal Zone. The geographical area within the Gulf of Mexico Service Area that lies between the coast line and a line defined by Great Circle arcs connecting the following points (geographical coordinates listed as North Latitude, West Longitude) consecutively in the order listed:

(1) 26°00′ 97°00′
(2) 27°30′ 97°00′
(3) 28°00′ 96°30′
(4) 28°30′ 95°30′
(5) 29°00′ 94°30′
(6) 29°30′ 93°30′
(7) 29°30′ 93°30′
(8) 29°20′ 92°30′
(9) 29°20′ 91°40′
(10) 29°00′ 91°10′
(11) 28°50′ 90°50′
(12) 29°00′ 89°40′
(13) 28°40′ 89°30′
(14) 29°00′ 88°40′
(15) 30°00′ 88°30′
(16) 30°00′ 86°00′
(17) 29°10′ 85°00′
(18) 29°30′ 84°00′
(19) 28°30′ 83°00′
(20) 28°00′ 83°15′
(21) 27°00′ 83°00′
(22) 26°00′ 82°20′
(23) 25°00′ 81°30′
(24) 24°40′ 83°00′
(25) 24°00′ 83°00′

Gulf of Mexico Service Area (GMSA). The cellular market comprising the water area of the Gulf of Mexico, bounded on the West, North and East by the coast line. Coast line, for this purpose, means the line of ordinary low water along that portion of the coast which is in direct contact with the open sea, and the line marking the seaward limit of inland waters. Inland waters include bays, historic inland waters and waters circumscribed by a fringe of

islands within the immediate vicinity of the shoreline.

* * * * *

3. Section 22.131 is amended by revising paragraph (d)(2)(iv) to read as follows:

§ 22.131 Procedures for mutually exclusive applications.

* * * * *

(d) * * *

(2) * * *

(iv) Any application to expand the CGSA of a cellular system (as defined in § 22.911) into unserved area, unless the proposed expansion would be into unserved area where the licensee applying has, on the filing date, the exclusive right to expand or modify its CGSA pursuant to § 22.947 or § 22.948.

* * * * *

(1) Section 22.911 is amended by removing the note following paragraph (a)(6) and adding paragraph (c)(4) to read as follows:

§ 22.911 Cellular geographic service area.

* * * * *

(c) * * *

(4) During the term of the authorization of the first-authorized cellular system on each channel block in the GMSA, the licensee of that system and the licensee of any adjacent market cellular system on the same channel block may agree that any service area boundary extending into any portion of the GMSA other than the GMSA Coastal Zone is a part of the CGSA of the extending system.

* * * * *

5. Section 22.912 is amended by adding a sentence at the end of paragraphs (b) and (c) to read as follows:

§ 22.912 Service area boundary extensions.

* * * * *

(b) * * * Except as restricted in paragraph (d) of this section, licensees of the first authorized cellular systems in the GMSA may allow SAB extensions from the adjacent market system on the same channel block into their CGSA and/or unserved area in the GMSA, other than in the GMSA Coastal Zone, during the term of their GMSA cellular system authorizations.

(c) * * * Except as restricted in paragraph (d) of this section, licensees of the first authorized cellular systems in the GMSA that also are the applicant or licensee on the same channel block in the adjacent market may allow or propose SAB extensions from their adjacent market system into their CGSA and/or unserved area in the GMSA, other than in the GMSA Coastal Zone, during the term of their GMSA cellular system authorization.

* * * * *

6. Section 22.948 is added to read as follows:

§ 22.948 Exclusive right to expand or modify CGSA within the GMSA.

The licensee of the first authorized cellular system on each channel block in the Gulf of Mexico Service Area (GMSA) is afforded, for the full term of its authorization, an exclusive right to expand or modify its CGSA anywhere within the GMSA, other than within the GMSA Coastal Zone.

(a) Except as provided in paragraph (b) of this section, the FCC does not accept applications for authority to operate a new cellular system in any unserved area in the GMSA, other than unserved area within the GMSA Coastal Zone.

(b) During the term of its authorization, the licensee of the first authorized cellular system on each channel block in the GMSA may enter into contracts with eligible parties, allowing such parties to apply (FCC Form 600) for a new cellular system on that channel block in any area within the GMSA, other than the GMSA Coastal Zone. The FCC may grant such applications if they are in compliance with the rules in this part.

(1) The contracts must define the CGSA of the subsequent cellular system in accordance with § 22.911, including any expansion rights ceded. If not exercised, any such expansion rights terminate when the authorization of the first cellular system expires.

(2) The license term of the first authorized cellular system on each channel block in the GMSA is not extended or affected in any way by the initial authorization of any subsequent cellular systems pursuant to paragraph (b) of this section.

(3) The FCC will accept applications for assignment of authorization or consent to transfer of control of the GMSA systems.

[FR Doc. 00–10221 Filed 4–24–00; 8:45 am]

BILLING CODE 6712–01–U

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Parts 1828 and 1852

Insurance—Partial or Total Immunity from Tort Liability for State Agencies and Charitable Institutions

AGENCY: National Aeronautics and Space Administration (NASA).

ACTION: Proposed rule.

SUMMARY: This is a proposed rule amending the NASA FAR Supplement (NFS) to allow State agencies and charitable institutions partial or total immunity from tort liability on NASA contracts.

DATES: Comments should be submitted on or before June 26, 2000.

ADDRESSES: Interested parties should submit written comments to Richard Kall, NASA Headquarters, Office of Procurement, Contract Management Division (Code HK), Washington, DC 20546. Comments may also be submitted by e-mail to r.kall@hq.nasa.gov.

FOR FURTHER INFORMATION CONTACT: Richard Kall, NASA, Office of Procurement, Contract Management Division (Code HK), (202) 358–0459.

SUPPLEMENTARY INFORMATION:

A. Background

The 1990 edition of the Federal Acquisition Regulation (FAR) provided in Subpart 28.311–2, Contract clause, the use of Alternates I and II to clause 52.228–7, Insurance—Liability to Third Persons, to allow State agencies and charitable institutions partial or total immunity from tort liability. The appropriate alternate could be used when provision 52.228–6, Insurance—Immunity From Tort Liability, was included in the solicitation. However, the 1997 edition of the FAR deleted all references in 28.311–2 relating to tort liability, and also deleted the provision and clause alternates. NASA now finds that the Agency has a need for these clauses and provision.

B. Regulatory Flexibility Act

NASA certifies that this proposed rule will not have a significant economic impact on a substantial number of small business entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) because it does not impose any new requirements.

C. Paperwork Reduction Act

The Paperwork Reduction Act does not apply because the proposed changes to the NFS do not impose any record keeping or information collection requirements, or collections of information from offerors, contractors, or members of the public that require the approval of the Office of Management and Budget under 44 U.S.C. 3501, *et seq.*

List of Subjects in 48 CFR Parts 1828 and 1852

Government procurement.

Tom Luedtke,

Associate Administrator for Procurement.

Accordingly, 48 CFR Parts 1828 and 1852 are proposed to be amended as follows:

1. The authority citation for 48 CFR Parts 1828 and 1852 continues to read as follows:

Authority: 42 U.S.C. 2473(c)(1).

PART 1828—BONDS AND INSURANCE

2. Revise sections 1828.311–1 and 1828.311–2, and add section 1828.311–270 to read as follows:

1828.311–1 Contract clause.

The contracting officer must insert the clause at FAR 52.228–7, Insurance—Liability to Third Persons, as prescribed in FAR 28.311–1, unless—

(a) Waived by the procurement officer; or

(b) The successful offeror represents in its offer that it is totally immune from tort liability as a State agency or as a charitable institution.

1828.311–2 Agency solicitation provisions and contract clauses.

1828.311–270 NASA solicitation provisions and contract clauses.

(a) The contracting officer must insert the clause at 1852.228–71, Aircraft Flight Risks, in all cost-reimbursement contracts for the development, production, modification, maintenance, or overhaul of aircraft, or otherwise involving the furnishing of aircraft to the contractor, except when the aircraft are covered by a separate bailment.

(b) The contracting officer must insert the provision at 1852.228–80, Insurance—Immunity from Tort Liability, in solicitations for research and development when a cost-reimbursement contract is contemplated.

(c) The contracting officer must insert FAR clause 52.228–7 and the associated clause at 1852.228–81, Insurance—Partial Immunity From Tort Liability, when the successful offeror represents in its offer that the offeror is partially immune from tort liability as a State agency or as a charitable institution.

(d) The contracting officer must insert the clause at 1852.228–82, Insurance—Total Immunity From Tort Liability, when the successful offeror represents in its offer that the offeror is totally immune from tort liability as a State agency or as a charitable institution.

PART 1852—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

3. Amend Part 1852 by adding sections 1852.228–80, 1852.228–81, and 1852.228–82 to read as follows:

1852.228–80 Insurance—Immunity From Tort Liability.

As prescribed in 1828.311–270(b), insert the following provision:

INSURANCE—IMMUNITY FROM TORT LIABILITY

(XXX)

If the offeror is partially or totally immune from tort liability to third persons as a State agency or as a charitable institution, the offeror will include in its offer a representation to that effect. When the successful offeror represented in its offer that it is immune from tort liability, the following clause(s) will be included in the resulting contract:

(a) When the offeror represents that it is partially immune from tort liability to third persons as a State agency or as a charitable institution, the clause at FAR 52.228–7, Insurance—Liability To Third Persons, and the associated clause 1852.22881, Insurance—Partial Immunity From Tort Liability, will be included in the contract.

(b) When the offeror represents that it is totally immune from tort liability to third persons as a State agency or as a charitable institution. The clause at 1852.228–82 Insurance—Total Immunity From Tort Liability, will be included in the contract.

(End of provision)

1852.228–81 Insurance—Partial Immunity From Tort Liability.

As prescribed in 1828.311–270(c), insert the following clause:

INSURANCE—PARTIAL IMMUNITY FROM TORT LIABILITY

(XXX)

(a) Except as provided for in paragraph (b) of this clause, the Government does not assume any liability to third persons, nor will the Government reimburse the Contractor for its liability to third persons, with respect to loss due to death, bodily injury, or damage to property resulting in any way from the performance of this contract.

(b) The Contractor need not provide or maintain insurance coverage as required by paragraph (a) of FAR clause 52.228–7, Insurance—Liability To Third Persons, provided that the Contractor may obtain any insurance coverage deemed necessary, subject to approval by the Contracting Officer as to form, amount, and duration. The Contractor shall be reimbursed for the cost of such insurance and, to the extent provided in paragraph (c) of FAR clause 52.228–7, for liabilities to third person for which the Contractor has obtained insurance coverage as provided in this paragraph (b), but for which such coverage is insufficient in amount.

(End of clause)

1852.228–82 Insurance—Total Immunity From Tort Liability

As prescribed in 1828.311–270(d), insert the following clause:

INSURANCE—TOTAL IMMUNITY FROM TORT LIABILITY

(XXX)

(a) The Government does not assume any liability to third persons, nor will the Government reimburse the Contractor for its liability to third persons, with respect to loss due to death, bodily injury, or damage to property resulting in any way from the performance of this contract or any subcontract under this contract.

(b) If any suit or action is filed, or if any claim is made against the Contractor, the cost and expense of which may be reimbursable to the Contractor under this contract, the Contractor will immediately notify the Contracting Officer and promptly furnish copies of all pertinent papers received by the Contractor. The Contractor will, if required by the Government, authorize Government representatives to settle or defend the claim and to represent the Contractor in or take charge of any litigation. The Contractor may, at its own expense, be associated with the Government representatives in any such claim or litigation.

(End of clause)

[FR Doc. 00–10281 Filed 4–24–00; 8:45 am]

BILLING CODE 7510–01–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

Endangered and Threatened Wildlife and Plants; 90-day Finding on Petition To List the Tibetan Antelope as Endangered Throughout Its Range

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of 90-day petition finding.

SUMMARY: We, the U.S. Fish and Wildlife Service (Service), announce the 90-day finding that a petition to list the Tibetan antelope (*Pantholops hodgsonii*) as endangered throughout its range has presented substantial information indicating that the action may be warranted. A status review of the species is initiated.

DATES: This finding was made on April 14, 2000. Comments and information may be submitted until June 26, 2000.

ADDRESSES: Submit comments, information, and questions to the Chief, Office of Scientific Authority; Mail Stop: Room 750, Arlington Square; U.S. Fish and Wildlife Service; Washington,

D.C. 20240 (Fax number: 703–358–2276; E-mail address: r9osa@fws.gov). Address express and messenger-delivered mail to the Office of Scientific Authority; Room 750, 4401 North Fairfax Drive; Arlington, Virginia 22203. You may inspect the petition finding, supporting data, and comments received, by appointment, from 8:00 a.m. to 4:00 p.m., Monday through Friday, at the Arlington, Virginia, address.

FOR FURTHER INFORMATION CONTACT: Dr. Kurt A. Johnson, Office of Scientific Authority, at the above address (Telephone number: 703–358–1708; E-mail address: r9osa@fws.gov).

SUPPLEMENTARY INFORMATION

Background

Section 4(b)(3)(A) of the Endangered Species Act (Act) of 1973 as amended (16 U.S.C. 1531 *et seq.*), requires us to make a finding on whether a petition to list, delist, or reclassify a species presents substantial information indicating that the requested action may be warranted. To the maximum extent practicable, we make this finding within 90 days following receipt of the petition, and we promptly publish a notice in the **Federal Register**. If the finding is positive, section 4(b)(3)(A) of the Act also requires us to commence a status review of the species. We now announce a 90-day finding on a recently received petition.

On October 6, 1999, the Service received a petition from the Wildlife Conservation Society (Joshua R. Ginsberg, Ph.D., Director, Asia Program, and George B. Schaller, Ph.D., Director of Science) and the Tibetan Plateau Project of Earth Island Institute (Mr. Justin Lowe, Director) requesting that the Tibetan antelope be listed as endangered throughout its entire range. Dr. Schaller is considered to be the world's leading expert on the Tibetan antelope. The Tibetan antelope is also known by its Tibetan name ''chiru.'' These two common names will be used interchangeably in this document.

The Tibetan antelope (*Pantholops hodgsonii;* sensu Wilson and Reeder 1993) is a medium-sized bovid endemic to the Tibetan Plateau in China (Tibet Autonomous Region (TAR), Xinjiang/Uygur Autonomous Region, and Qinghai Province) and small portions of India (Ladakh) and western Nepal (although no evidence exists that the species still occurs in Nepal). Adult males are characterized by long, slender, antelope-like black horns. Although the Tibetan antelope has been placed in the subfamily Antilopinae, recent morphological and molecular research indicate that the species is most closely allied to the goats and other members of the subfamily Caprinae (Gentry 1992, Gatesy *et al.* 1992; both cited in Ginsberg *et al.* 1999). The species is uniquely adapted to the high elevation and cold, dry climate of the Tibetan Plateau (Schaller 1998). The sexes segregate almost completely during the spring and early summer (May and June), when adult females and their female young migrate north to certain calving grounds and return south by late July or early August, covering distances as long as 300 kilometers (186 miles) each way (Schaller 1998). Seasonal migrations by chiru constitute a critical aspect of the species' ecology and help define the ecosystem as a whole.

There are no accurate estimates of Tibetan antelope numbers in the past, although the few early western explorers who ventured onto the Tibetan Plateau noted the presence of large herds in many areas (Bonvalot 1892, Deasy 1901, Hedin 1903, Hedin 1922, Rawling 1905, and Wellby 1898; all cited in Schaller 1998). Schaller (1999) suggested that upwards of 1 million Tibetan antelope roamed the Tibetan Plateau as recently as 40–50 years ago. Historical population estimates of 500,000 to 1 million appear to be reasonable based on the limited information available.

Although data on the current population dynamics of chiru are fragmentary and preliminary (Schaller 1998), it is clear that the total population has declined drastically in the past 30 years and is continuing to decline. Schaller (1998) estimated that the total population in the mid-1990's may have been as low as 65,000–75,000 individuals. If one assumes that the historical population of chiru was 500,000 individuals, the mid-1990's estimate represents a population decline of 85 percent. Although overall mortality rates are not known, poaching mortality has been estimated to be as high as 20,000 individuals per year (SFA 1998). Annual recruitment of young has been estimated at around 12 percent, although recruitment failures have been documented in certain areas as a result of bad winter weather (Schaller 1998). If one assumes that the total current population of chiru is 75,000 individuals and that the population is currently declining at a rate of 1,000–3,000 individuals per year, then barring any changes, the species is likely to go functionally extinct within the next 25 to 75 years. The species' role as the dominant, native, grazing herbivore of the Tibetan Plateau ecosystem has already been diminished, and its influence on ecosystem structure and function would likely be substantially reduced or eliminated well before the species actually goes extinct.

Changes in Chinese Government policy have led to increasing human development and activity on the Tibetan Plateau, including road development, settlement by pastoralists, resource extraction activities, and rangeland use for domestic livestock grazing (Ginsberg *et al.* 1999). These activities have already adversely modified or destroyed Tibetan antelope habitat in some areas and threaten to modify or destroy habitat over a large area in the near future. However, Tibetan antelope populations are declining principally because large numbers of chiru are being killed illegally for their wool, known in trade as shahtoosh (''king of wool''), which is one of the finest animal fibers known (Ginsberg *et al.* 1999). In China, the chiru is a Class 1 protected species under the Law of the People's Republic of China on the Protection of Wildlife (1989); all killing of Class 1 animals is prohibited except by special permit from the central government.

Most chiru poaching takes place in the Arjin Shan, Chang Tang, and Kekexili Nature Reserves in China by a variety of hunters, including local herders, residents, officials, military personnel, gold miners, and truck drivers (Schaller 1993, Schaller and Gu 1994). Organized, large-scale poaching rings have developed in some areas. Tibetan antelope are always killed to collect their fiber. No cases of capture-and-release wool collection are known, nor is naturally-shed fiber collected from shrubs and grass tufts as is often stated (primarily by people within the shahtoosh industry). Hunters shear the hides and collect and clean the under-fur of the antelope, or sell the hides to dealers who prepare the shahtoosh (Wright and Kumar 1997).

Shahtoosh is smuggled out of China by truck or animal caravan, through Nepal or India, and into the region of Jammu and Kashmir. This activity is in violation of the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES), as well as Indian and Chinese law. In Jammu and Kashmir, shahtoosh is processed into expensive, high-fashion shawls and scarves which are greatly valued by some people from around the world, including the United States. To reach consumer markets, the shawls must be smuggled out of India and into the consumer countries, in violation of CITES and domestic laws of those countries. The international demand for chiru fiber and shahtoosh products is the most serious threat to

the continued existence of the Tibetan antelope.

Schaller speculates that, during the 1980's and 1990's, tens of thousands of chiru were killed for their wool (Ginsberg *et al.* 1999). One chiru carcass yields about 125–150 grams (4–5 ounces) of fiber. In the winter of 1992, an estimated 2,000 kilograms (kg) (4,420 pounds) of wool reached India, and consignments of 600 kg (1,325 pounds) were seized (and released) in India during 1993 and 1994 (Bagla 1995, cited in Ginsberg *et al.* 1999). This amount alone represents 17,000 chiru. In October 1998, 14 poachers in the TAR were convicted of collectively killing 500 chiru and purchasing 212 hides, and were sentenced to 3 to 13 years imprisonment (Xinhua 1998, cited in Ginsberg *et al.* 1999). The largest enforcement action to date within China, involving several jurisdictions and dubbed the ''Hoh Xil Number One Action'' by Chinese authorities, resulted in the arrest of 66 poachers and the confiscation of 1,658 chiru hides in April and May, 1999 (Liu 1999, cited in Ginsberg *et al.* 1999).

Despite an Appendix-I listing under CITES, and protection by domestic legislation at the national level by China, Nepal, and India, existing regulatory mechanisms have been inadequate to prevent the poaching of Tibetan antelope or the international smuggling of raw shahtoosh and finished shahtoosh products.

We find that the petition presents substantial information indicating that the requested action may be warranted. Specifically, substantial information indicates that the total population of Tibetan antelope has declined drastically over the last three decades, and that this decline has resulted primarily from overutilization for commercial purposes and inadequacy of existing regulatory mechanisms. Habitat impacts, especially grazing of domestic livestock, appear to be a contributory factor in the decline, and could have potentially greater impacts in the near future.

Pursuant to section 4(b)(3)(A), we hereby commence a review of the status of *Pantholops hodgsonii.* We encourage the submission of appropriate data, opinions, and publications regarding the subject petition or the status of the species. Our practice is to make comments, including names and home addresses of respondents, available for public review during regular business hours. Individual respondents may request that we withhold their home address from the rulemaking record, which we will honor to the extent allowable by law. In some circumstances, we may also withhold from the rulemaking record a respondent's identity, as allowable by law. If you wish for us to withhold your name and/or address, you must state this prominently at the beginning of your comment. However, we will not consider anonymous comments. We will make all submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, available for public inspection in their entirety.

Section 4(b)(3)(B) of the Act requires that we make a finding within 12 months of receipt of the petition as to whether the listing of *P. hodgsonii* as threatened or endangered is warranted.

References Cited

You may request a complete list of references cited in this Notice from the Office of Scientific Authority (see **ADDRESSES** section).

Authority

The authority for this action is the Endangered Species Act of 1973 (16 U.S.C. 1531 *et seq.*).

Dated: April 14, 2000

Jamie Rappaport Clark,

Director.

[FR Doc. 00–10265 Filed 4–24–00; 8:45 am]

BILLING CODE 4310–55–P

Notices

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This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Forest Service

DEPARTMENT OF INTERIOR

Bureau of Land Management

[ID–918–00–1610–DE–UCRB]

Interior Columbia Basin Ecosystem Management Project, Northern, Intermountain, and Pacific Northwest Regions; Interior Columbia Basin Ecosystem Management Project, States of Oregon, Washington, Idaho, Montana

AGENCIES: Forest Service, USDA; Bureau of Land Management, USDI.

ACTION: Notice of availability of a Congressionally-required report on the Interior Columbia Basin Ecosystem Management Project (ICBEMP).

SUMMARY: The Forest Service and Bureau of Land Management are developing a scientifically sound, ecosystem-based management strategy for certain lands under their jurisdiction east of the Cascade crest in Oregon and Washington and in the Columbia River Basin in Idaho and Montana. The 1998 and 2000 Interior and Related Agencies Appropriations Acts required the Secretaries of Agriculture and the Interior to prepare a report on certain aspects of the ICBEMP, to provide for a 120-day public review of, and comment on, this report, and to respond to comments on the report in the final Environmental Impact Statement for the ICBEMP. The Congressionally-required report is now available for public review and comment.

DATES: Written comments on the report will be accepted through August 23, 2000. The ICBEMP interdisciplinary team will then analyze the comments and respond to them in the final EIS. The final EIS is expected to be available in late fall, 2000.

ADDRESSES: Copies of the report may be obtained from ICBEMP, 304 N. 8th Street, Room 250, Boise, ID 83702 or by calling (208) 334–1770, ext. 120. The report is also available via the internet (http://www.icbemp.gov).

Comments on the report should be submitted in writing to SDEIS, P.O. Box 420, Boise, Idaho 83701–0420. Comments may be submitted electronically at the ICBEMP's home page (http://www.icbemp.gov), where a comment form is available.

Comments, including names and street addresses of respondents, will be available for public review at the Boise office during regular business hours (8 a.m. to 5 p.m. Monday through Friday, except holidays), and may be published as part of the final environmental impact statement. Individual respondents may request confidentiality. If you wish to withhold your name or street address from public review or from disclosure under the Freedom of Information Act, you must state this prominently at the beginning of your written comment. Such requests will be honored to the extent allowed by law. All submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, will be made available for public inspection in their entirety. Comments submitted anonymously will be accepted and considered; however, those who submit anonymous comments may not have standing to appeal the decision under 36 CFR 217 (Forest Service) or standing to protest the proposed decision under 43 CFR 1610.5–2 (Bureau of Land Management).

FOR FURTHER INFORMATION CONTACT: Susan Giannettino, Project Manager, 304 North 8th St., Room 250, Boise, Idaho 83702, phone (208) 334–1770; or Geoff Middaugh, Deputy Project Manager, P.O. Box 2344, Walla Walla, Washington 99362, phone (509) 522–4030.

SUPPLEMENTARY INFORMATION: This report is in response to the requirements defined in Section 323(a) of the 1998 Interior and Related Agencies Appropriations Act, as modified by Section 335 of the 2000 Interior and Related Agencies Appropriations Act.

Section 335 of the 2000 Interior and Related Agencies Appropriations Act modified and addressed specific portions and timing of Section 323(a) of the 1998 Interior and Related Agencies Appropriations Act, requiring the Secretaries of Agriculture and the Interior to submit to the House and Senate Committees on Appropriations a report that addresses four major topics.

First, this report describes, by type and responsible official, anticipated land and resource management decisions associated with the ICBEMP. The report also describes the procedures for implementing decisions in the ICBEMP area.

Second, the report provides an estimate of the time frames for and costs of these decisions. It also includes a statement of the source of funds.

Third, the report contains an estimate of the production of goods and services from the federal lands managed by the Forest Service and the Bureau of Land Management (BLM) for the first five years, beginning with the date of publication of the Final EIS. Much of the information in this report is also included in the Supplemental Draft EIS.

Finally, the report provides a description of the decision-making process to be used to establish priorities in accordance with appropriations, if the requirements cannot be accomplished with current appropriations levels, adjusted for inflation, and without any reprogramming of such appropriations.

Dated: April 17, 2000.

Susan Giannettino,

Project Manager, US Forest Service.

Dated: April 17, 2000.

Cathy Humphrey,

Deputy EIS Team Leader, Bureau of Land Management.

[FR Doc. 00–10079 Filed 4–24–00 8:45 am]

BILLING CODE 4310–66–M

DEPARTMENT OF AGRICULTURE

Grain Inspection, Packers and Stockyards Administration

Advisory Committee Meeting

Pursuant to the provisions of section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), notice is hereby given of the following committee meeting:

Name: Grain Inspection Advisory Committee.

Date: May 16–17, 2000.

Place: DoubleTree Hotel-Lloyd Center, 1000 N.E. Multnomah, Portland, Oregon.

Time: 8:00 am–5:00 pm on May 16 and 8:00 am–11:30 am on May 17, 2000.

Purpose: To provide advice to the Administrator of the Grain Inspection, Packers and Stockyards Administration (GIPSA) with respect to the implementation of the U.S. Grain Standards Act (7 U.S.C. 71 *et seq.*).

The agenda includes a review and discussion of GIPSA's financial status, reauthorization, biotechnology, research and information technology strategies, and other related issues concerning the delivery of grain inspection and weighing services to American agriculture.

Public participation will be limited to written statements, unless permission is received from the Committee Chairman to orally address the Committee. Persons, other than members, who wish to address the Committee or submit written statements before or after the meeting, should contact the Administrator, GIPSA, U.S. Department of Agriculture, 1400 Independence Avenue, SW, STOP 3601, Washington, DC 20250–3601, telephone (202) 720–0219 or FAX (202) 205–9237.

The meeting will be open to the public. Persons with disabilities who require alternative means of communication of program information or related accommodation should contact Marianne Plaus, telephone (202) 690–3460 or FAX (202) 205–9237.

Dated: April 19, 2000.

James R. Baker,

Administrator.

[FR Doc. 00–10307 Filed 4–24–00; 8:45 am]

BILLING CODE 3410–EN–P

DEPARTMENT OF AGRICULTURE

Rural Business-Cooperative Service

Inviting Preapplications for Rural Cooperative Development Grants

AGENCY: Rural Business-Cooperative Service, USDA.

ACTION: Notice of funding availability.

SUMMARY: The Rural Business-Cooperative Service (RBS) announces the availability of approximately $4 million in competive Rural Cooperative Development Grant (RCDG) funds for fiscal year (FY) 2000. Of this amount, $1.5 million will be reserved for preapplications whose focus is on assistance to small, minority producers through their cooperative businesses. The intended effect of this notice is to solicit preapplications for FY 2000 and award grants before September 1, 2000.

DATES: The deadline for receipt of a preapplication is June 2, 2000. Preapplications received after that date will not be considered. Preapplications should be sent to the State Rural Development Offices (see attached list for addresses).

ADDRESSES: Entities wishing to apply for assistance should contact their USDA Rural Development State office to receive further information and copies of the preapplication package.

FOR FURTHER INFORMATION CONTACT: James E. Haskell, Assistant Deputy Administrator, Cooperative Services, Rural Business-Cooperative Service, U.S. Department of Agriculture, Stop 3250, Room 4016, South Agriculture Building, 1400 Independence Avenue, SW., Washington, DC 20250–3250. Telephone (202) 720–8460.

SUPPLEMENTARY INFORMATION: The Rural Technology and Cooperative Development Grants (RTCDG) program is authorized by section 310B(e) of the Consolidated Farm and Rural Development Act (7 U.S.C. 1932) and regulations are contained in 7 CFR part 4284, subpart F. The primary objective of the RCDG program is to improve the economic condition of rural areas through cooperative development. The program is administered through USDA Rural Development State offices acting on behalf of RBS.

Grants will be awarded on a competitive basis to nonprofit corporations and institutions of higher education based on specific selection criteria. The priorities described in this paragraph will be used by RBS to rate preapplications. RBS review of preapplications will include the complete preapplication package submitted to the Rural Development State office. Points will be distributed according to ranking with other preapplications.

(a) Priority will be given to applications that:

(1) Demonstrate a proven track record in administering a nationally coordinated or regionally or State-wide operated project;

(2) Demonstrate previous expertise in providing technical assistance to cooperatives in rural areas;

(3) Demonstrate the ability to assist in the retention of business, facilitate the establishment of cooperatives and new cooperative approaches, or generate employment opportunities that will improve the economic conditions of rural areas;

(4) Demonstrate the ability to create horizontal linkages among cooperative businesses within and among various sectors in rural areas of the United States and vertical linkages to domestic and international markets;

(5) Provide technical assistance and other services to underserved and economically distressed rural areas of the United States;

(6) Commit to providing greater than a 25 percent matching contribution with private funds and in-kind contributions;

(7) Evidence transferability or demonstration value to assist rural areas outside of project area; and

(8) Demonstrate that any cooperative development activity is consistent with positive environmental stewardship.

Fiscal Year 2000 Preapplication Submission

Preapplications must include a clear statement of the goals and objectives of the project and a plan which describes the proposed project as required by the statute and 7 CFR part 4284, subpart F. Each preapplication received in the State office will be reviewed to determine if the preapplication is consistent with the eligible purposes outlined in 7 CFR part 4284, subpart F. Preapplications without supportive data to address selection criteria will not be considered. Also, since the cooperative center concept is to provide a wide range of technical assistance services, including feasibility analysis, to all cooperatives or potential cooperatives within the project area, preapplications that focus on a single cooperative will not be considered. Copies of 7 CFR part 4284, subpart F, will be provided to any interested applicant by making a request to the Rural Development State office or RBS National office.

Preapplications must be completed and submitted to the State Rural Development office as soon as possible, but no later than June 2, 2000. Preapplications received after June 2 will not be considered.

Preapplications must contain the documentation delineated in 7 CFR 4284.528. For ease of locating information, please include in each preapplication information as follows:

(a) A detailed Table of Contents containing page numbers for each component of the preapplication.

(b) A project summary of 250 words or less on a separate page. This page should include the title of the project and the names of the primary project contacts and the applicant organization, followed by the summary. The summary should be self-contained and should describe the overall goals, relevance of the project, and a listing of all organizations involved in the project. The project summary should immediately follow the Table of Contents.

(c) A separate one-page information sheet which lists each of the eight evaluation criteria followed by the page

numbers of all relevant material and documentation contained in the preapplication which supports that criteria. This page should immediately follow the project summary; and

(d) For applicants who have received funding under the Rural Cooperative Development Grant program in FY 1997, FY 1998, or FY 1999 a summation, not to exceed three pages, of progress and results for all projects funded fully or partially by the RCDG program in those years, including the status of cooperative businesses organized and all eligible grant purpose activities listed under 7 CFR 4284.515.

The National office will score applications based only on the grant selection criteria contained in 7 CFR part 4284, subpart F and listed above, and will select awardees subject to the availability of funds and the awardee's satisfactory submission of a formal application and related materials in accordance with subpart F. Entities submitting preapplications that are selected for award will be invited by the State office to submit a formal application prior to September 1. It is anticipated that grant awardees will be selected by September 1, 2000.

Dated: April 17, 2000.

Dayton Watkins,

Administrator, Rural Business-Cooperative Services.

U.S. Department of Agriculture Rural Development State Offices (Revised 00/04/19)

ALABAMA

USDA Rural Development State Office
Sterling Center, Suite 601
4121 Carmichael Road
Montgomery, AL 36106–3683

ALASKA

USDA Rural Development State Office
800 West Evergreen, Suite 201
Palmer, AK 99645–6539

ARIZONA

USDA Rural Development State Office
3003 North Central Avenue, Suite 900
Phoenix, AZ 85012–2906

ARKANSAS

USDA Rural Development State Office
700 West Capitol Ave., Room 3416
Little Rock, AR 72201–3225

CALIFORNIA

USDA Rural Development State Office
430 G Street, Agency 4169
Davis, CA 95616–4169

COLORADO

USDA Rural Development State Office
655 Parfet Street, Room E–100
Lakewood, CO 80215

DELAWARE-MARYLAND

USDA Rural Development State Office
4607 South Dupont Hwy
P.O. Box 400
Camden, DE 19934–9998

GEORGIA

USDA Rural Development State Office
Stephens Federal Building
355 E. Hancock Avenue
Athens, GA 30601–2768

HAWAII

USDA Rural Development State Office
Federal Building, Room 311
154 Waianuenue Avenue
Hilo, HI 96720

IDAHO

USDA Rural Development State Office
9173 West Barnes Dr., Suite A1
Boise, ID 83709

ILLINOIS

USDA Rural Development State Office
Illini Plaza, Suite 103
1817 South Neil Street
Champaign, IL 61820

INDIANA

USDA Rural Development State Office
5975 Lakeside Boulevard
Indianapolis, IN 46278

IOWA

USDA Rural Development State Office
Federal Building, Room 873
210 Walnut Street
Des Moines, IA 50309

KANSAS

USDA Rural Development State Office
1200 SW Executive Drive
P.O. Box 4653
Topeka, KS 66615

LOUISIANA

USDA Rural Development State Office
3727 Government Street
Alexandria, LA 71302

MAINE

USDA Rural Development State Office
444 Stillwater Avenue, Suite 2
P.O. Box 405
Bangor, ME 04402–0405

MASS/RI/CONN

USDA Rural Development State Office
451 West Street
Amherst, MA 01002

MICHIGAN

USDA Rural Development State Office
3001 Coolidge Road, Suite 200
East Lansing, MI 48823

MINNESOTA

USDA Rural Development State Office
410 AgriBank Building
375 Jackson Street
St. Paul, MN 55101–1853

MISSISSIPPI

USDA Rural Development State Office
Federal Building, Suite 831
100 West Capitol Street
Jackson, MS 39269

MISSOURI

USDA Rural Development State Office
601 Business Loop 70 West
Parkade Center, Suite 235
Columbia, MO 65203

FLORIDA/VI

USDA Rural Development State Office
4440 NW 25th Place
P.O. Box 147010
Gainesville, FL 32614–7010

NEBRASKA

USDA Rural Development State Office
Federal Building, Room 152
100 Centennial Mall N
Lincoln, NE 68508

NEVADA

USDA Rural Development State Office
1390 South Curry Street
Carson City, NV 89703–9910

NEW JERSEY

USDA Rural Development State Office
Transfield Plaza, Suite 22
790 Woodlane Road
Mt. Holly, NJ 08060

NEW MEXICO

USDA Rural Development State Office
6200 Jefferson Street NE, Room 255
Albuquerque, NM 87109

NEW YORK

USDA Rural Development State Office
The Galleries of Syracuse
441 South Salina Street Suite 357
Syracuse, NY 13202–2541

NORTH CAROLINA

USDA Rural Development State Office
4405 Bland Road, Suite 260
Raleigh, NC 27609

KENTUCKY

USDA Rural Development State Office
771 Corporate Drive, Suite 200
Lexington, KY 40503

OKLAHOMA

USDA Rural Development State Office
100 USDA, Suite 108
Stillwater, OK 74074–2654

OREGON

USDA Rural Development State Office
101 SW Main Street, Suite 1410
Portland, OR 97204–3222

PENNSYLVANIA

USDA Rural Development State Office
One Credit Union Place, Suite 330
Harrisburg, PA 17110–2996

PUERTO RICO

USDA Rural Development State Office
New San Juan Office Building, Rm. 501
159 Carlos E. Chardon Street
Hato Rey, PR 00918–5481

SOUTH CAROLINA

USDA Rural Development State Office
Strom Thurmond Federal Building
1835 Assembly Street, Room 1007
Columbia, SC 29201

SOUTH DAKOTA

USDA Rural Development State Office
Federal Building, Room 210

200 4th Street SW
Huron, SD 57350

MONTANA

USDA Rural Development State Office
Unit 1, Suite B
P.O. Box 850
900 Technology Boulevard
Bozeman, MT 59715

UTAH

USDA Rural Development State Office
Wallace F. Bennett Federal Building
125 South State Street, Room 4311
P.O. Box 11350
Salt Lake City, UT 84147–0350

VERMONT/NH

USDA Rural Development State Office
City Center, 3rd Floor, 89 Main Street
Montpelier, VT 05602

VIRGINIA

USDA Rural Development State Office
Culpeper Building, Suite 238
1606 Santa Rosa Road
Richmond, VA 23229

WASHINGTON

USDA Rural Development State Office
1835 Blacklake Boulevard, SW.
Suite B
Olympia, WA 98512–5715

WEST VIRGINIA

USDA Rural Development State Office
75 High Street, Room 320
Morgantown, WV 26505–7500

WISCONSIN

USDA Rural Development State Office
4949 Kirschling Court
Stevens Point, WI 54481

NORTH DAKOTA

USDA Rural Development State Office
Federal Building, Room 208
220 East Rosser, P.O. Box 1737
Bismarck, ND 58502–1737

OHIO

USDA Rural Development State Office
Federal Building, Room 507
200 North High Street
Columbus, OH 43215–2477

TENNESSEE

USDA Rural Development State Office
3322 West End Avenue, Suite 300
Nashville, TN 37203–1084

TEXAS

USDA Rural Development State Office
Federal Building, Suite 102
101 South Main
Temple, TX 76501

WYOMING

USDA Rural Development State Office
100 East B, Federal Building, Rm 1005
P.O. Box 820
Casper, WY 82602

[FR Doc. 00–10227 Filed 4–24–00; 8:45 am]

BILLING CODE 3410–XY–P

DEPARTMENT OF COMMERCE

[Docket No. 0004121104–0104–01]

RIN 0651–XX24

Privacy Act of 1974; System of Records

AGENCY: Department of Commerce.

ACTION: Notice of New Privacy Act System of Records: Commerce/Patent and Trademark System 15: Maintenance of Invention Promoter Complaints.

SUMMARY: The Department of Commerce is creating a new system of records listed under Commerce-Patent and Trademark Systems: Maintenance of Invention Promoter Complaints. We invite public comment on the system announced in this publication.

DATES: Effective Date: The system will become effective without further notice on May 25, 2000 unless comments dictate otherwise.

Comment Date: To be considered, written comments must be submitted on or before May 25, 2000.

ADDRESSES: Comments may be sent via United States Mail delivery to Marshall Honeyman or Raymond Chen, Office of the Solicitor, United States Patent and Trademark Office, Box 8, Washington, DC 20231; via facsimile at 703–305–9373. All comments received will be available for public inspection at the Public Search Facilities, Crystal Plaza 3, 2021 South Clark Place, Arlington, VA 22202.

For further information contact: Marshall Honeyman, Office of the Solicitor, Box 8, Washington, DC 20231, or by phone at 703–305–9035.

SUPPLEMENTARY INFORMATION: Pursuant to the implementation of the Inventors' Rights Act of 1999, Pub. L. 106–113, section 4001 (to be codified at 35 U.S.C. 297), the United States Patent and Trademark Office (Office) is required to make complaints received by the Office involving invention promoters publicly available, together with any response of the invention promoters. A new system of records is being created by the Office to maintain these complaints and responses.

The Department of Commerce finds no probable or potential effect of the proposal on the privacy of individuals. To minimize the risk of unauthorized access to the system of records, the Office will locate all unpublished paper records in lockable file cabinets or in metal file cabinets in secured rooms or secured premises with access limited to those whose official duties require access. Electronic data will be stored in secured premises with access limited to those whose official duties require access.

Classification

Administrative Procedure Act

This notice is not subject to the notice and comment requirements of the Administrative Procedure Act. 5 U.S.C. 553(a)(2).

Executive Order 12866

This notice is exempt from review under Executive Order 12866.

Brenda Dolan,

Departmental Freedom of Information Act and Privacy Act Officer.

Commerce/PAT–TM–15

SYSTEM NAME:

System for Maintenance of Invention Promoter Complaints—COMMERCE/PAT–TM–# TBD.

SYSTEM LOCATION:

The Office of Independent Inventor Programs, U.S. Patent and Trademark Office, 2121 South Clark Street, Arlington, Virginia 22202.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Complaining inventors, invention promoters, and interested members of the public.

CATEGORIES OF RECORDS IN THE SYSTEM:

Complainant names, addresses, and telephone numbers; invention promoter names, addresses, and telephone numbers; complaints regarding invention promoters, responses to complaints by invention promoters, and correspondence relating to these complaints and responses.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 301; 35 U.S.C. 1, 6, and 297.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

See Prefatory Statement of General Routine uses Nos.1–5, 8–10, 12 and 13. Customer complaints regarding invention promoters together with responses by the invention promoters will be made publicly available.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

Storage: Paper records in file folder or distributed to individuals and management; microfilm and electronic storage media.

Retrievability: Complaints and responses will be assigned numbers. Documents may be retrieved by number, name of complainant, or name of invention promoter.

Safeguards: Buildings employ security systems. Records are maintained in areas accessible only to authorized personnel who are properly screened, cleared, and trained. Where information is retrievable by terminal, all safeguards appropriate to secure the ADP telecommunications system (hardware and software) are utilized.

RETENTION AND DISPOSAL:

Records retention and disposal is in accordance with the Office of Independent Inventor Program Records Control Schedule.

SYSTEM MANAGER(S) AND ADDRESS:

Director, Office of Independent Inventor Programs, U.S. Patent and Trademark Office, 2011 Crystal Drive, Arlington, VA 22202.

NOTIFICATION PROCEDURE:

Information may be obtained from: Privacy Officer, Office of the Solicitor, U.S. Patent and Trademark Office, Box 8, Washington, DC 20231. Requester should provide name, address, date of application, and record sought, pursuant to the inquiry provisions of the Department's rules which appear in 15 CFR part 4b.

RECORD ACCESS PROCEDURES:

Requests from individuals should be addressed to: Same address as stated in the notification section above.

CONTESTING RECORD PROCEDURES:

The Department's rules for access, for contesting contents, and for appealing initial determinations by the individual concerned appear in 15 CFR part 4b.

RECORD SOURCE CATEGORIES:

Complaining individuals and responding invention promoters.

[FR Doc. 00–10269 Filed 4–24–00; 8:45 am]

BILLING CODE 3510–16–P

DEPARTMENT OF COMMERCE

[Docket No. 000412105–0105–01]

RIN 0651–XX25

Privacy Act of 1974; System of Records

AGENCY: Department of Commerce.

ACTION: Notice of New Privacy Act System of Records: Commerce/Patent and Trademark System 16.

SUMMARY: The Department of Commerce is creating a new systems of records listed under Commerce/Patent and Trademark System: PKI Registration and Maintenance System. This action has been taken to comply with the Privacy Act notice requirements. We invite public comments on the system announced in this publication.

DATES: *Effective Date:* The system will become effective as proposed without further notice on Mary 25, 2000 unless comments dictate otherwise.

Comment Date: To be considered, written comments must be submitted on or before May 25, 2000.

ADDRESSES: Comments may be sent via United States Mail delivery to Raymond Chen, Office of the Solicitor, United States Patent and Trademark Office, Box 8, Washington, DC 20231; via facsimile at 703–305–9373. All comments received will be available for public inspection at the Public Search Facilities, Crystal Plaza 3, 2021 South Clark Place, Arlington, VA 22202. For further information contact: Raymond Chen, Office of the Solicitor, Box 8, Washington, DC 20231, or by phone at 703–305–9035.

SUPPLEMENTARY INFORMATION: Pursuant to the implementation of a Public Key Infrastructure (PKI) by the Patent and Trademark Office (PTO), a new system of records is being created to maintain the records of the application for, the grant of, and the revocation of digital certificates issued by the PTO, as well as key recovery services provided in reference to digital certificates. This notice describes the current practices of the PTO.

The PKI is a program that the PTO has implemented to support secure electronic communications between the PTO and its customers. The information collected by the PTO through the Certificate Action Form (PTO Form PTO–2042) is used to authorize the creation and revocation of a digital certificate or to perform key recovery. The digital certificate enables the PTO to provide the customer with a digital identity and to support encrypted communication between the customer and the PTO.

Using PKI enables the PTO to offer the option to applicants to review their patent application information, to send their patent applications, and to communicate with the PTO electronically, while preserving the integrity and confidentiality of these various actions.

Both the Patent Statute (35 U.S.C. § 122) and the Patent Cooperation Treaty established between the United States and the international community require that patent applications be preserved in confidence. Using PKI ensures that the patent applications are preserved in confidence because it permits the PTO to authenticate a customer's identity and encrypt the information exchanged between the PTO and the customer.

The PTO will use PKI to support secure communications and electronic commerce with its applicant community, international business partners, the Patent and Trademark Depository Libraries, its own employees, and support contractors. In implementing PKI, the PTO is indicating to its customers that the agency is making a major commitment to preserve the confidentiality and integrity of the electronic transactions.

In addition to the notice of routine uses, the notice includes the categories of individuals covered by the system, categories of records in the system, location of records, authority for maintenance of the system, policy and practices for storing records, and the title and business address of the agency official responsible for the records. A more detailed explanation of the notice follows.

The below-referenced Prefatory Statement of General Routine uses is found at 46 FR 63501–63502 (December 31, 1981).

The Department of Commerce finds no probable or potential effect of the proposal on the privacy of individuals. To minimize the risk of unauthorized access to the system of records, the PTO has located paper records in lockable file cabinets or in metal file cabinets in secured rooms or secured premises with access limited to those whose official duties require access. Electronic files are stored in secured premises with electronic access limited to those whose official duties require access.

Classification

Administrative Procedure Act: This notice is not subject to the notice and comment requirements of the Administrative Procedure Act, 5 U.S.C. 553(a)(2).

Executive Order 12866: This notice is exempt from review under Executive Order 12866.

Brenda Dolan,

Departmental Freedom of Information Act and Privacy Act Officer.

Commerce/PAT–TM–16

SYSTEM NAME:

USPTO PKI Registration and Maintenance System.

SYSTEM LOCATION:

Office of Enrollment and Discipline, U.S. Patent and Trademark Office, 2011 Crystal Drive, Arlington, VA 22202; and Office of Information Systems Security, U.S. Patent and Trademark Office, 2121 Crystal Drive, Arlington, VA 22202.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Registered Attorneys and Agents; Employees of Registered Attorneys and Agents designated to hold a certificate; Independent Inventors; an Employees of the Patent and Trademark Office and other individuals who apply for the use of a digital certificate including Patent and Trademark Depository Library personnel, employees of other Intellectual Property Offices, and World Intellectual Property Organization.

CATEGORIES OF RECORDS IN THE SYSTEM:

Requester status, signature, name, address, registration number, telephone, facsimile, electronic mail, associated customer numbers, action requested (certificate application, certificate revocation or key recovery), reason for the request, sponsoring Attorney/Agency signature, Notary Public signature, trusted party signature, distinguished name, date of issuance, and expiration.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 301 and 35 U.S.C. 6, 42(c).

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

See Prefatory Statement of General Routine Uses Nos. 1–5 and 9–13.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Paper records in file folder and electronic storage media.

RETRIEVABILITY:

Filed by organizations; cross referenced for access by name, and where appropriate, customer number, employee number, issue, activity, or other unique variable information field.

SAFEGUARDS:

Building employ security systems. Records are maintained in areas accessible only to authorized personnel who are properly screened, cleared, and trained. Where information is retrievable electronically, all safeguards appropriate to secure the ADP telecommunications system (hardware and software) are utilized.

RETENTION AND DISPOSAL:

Records retention and disposal is in accordance with the Office of Enrollment and Discipline Records Control Schedule.

SYSTEM MANAGER(S) AND ADDRESS:

Director, Office of Enrollment and Discipline, U.S. Patent and Trademark Office, Washington, DC 20231; Manager, Information Systems Security Division, U.S. Patent and Trademark Office, Washington, DC 20231.

NOTIFICATION PROCEDURE:

Information may be obtained from: Director, Office of Enrollment and Discipline, U.S. Patent and Trademark Office, Washington, DC 20231; Chief Information Officer, U.S. Patent and Trademark Office, Washington, DC 20231. Requester should provide employee name and number, in accordance with the inquiry provisions of the Department's rules which appear in 15 CFR Part 4b.

RECORD ACCESS PROCEDURES:

Requests from individuals should be addressed to: Same address as stated in the notification section above.

CONTESTING RECORD PROCEDURES:

The Department's rules for access, for contesting contents, and appealing initial determinations by the individual concerned appear in 15 CFR Part 4b. Use above address.

RECORD SOURCE CATEGORIES:

Subject individual, those authorized by the individual to furnish information, and the individual's supervisors.

[FR Doc. 00–10270 Filed 4–24–00; 8:45 am]

BILLING CODE 3510–16–M

DEPARTMENT OF COMMERCE

Economic Development Administration

Notice of Petitions by Producing Firms for Determination of Eligibility To Apply for Trade Adjustment Assistance

AGENCY: Economic Development Administration (EDA), DOC.

ACTION: To give firms an opportunity to comment.

Petitions have been accepted for filing on the dates indicated from the firms listed below.

LIST OF PETITION ACTION BY TRADE ADJUSTMENT ASSISTANCE FOR PERIOD 03/16/2000–04/14/2000

Firm name	Address	Date petition accepted	Product
Southern Glove Mfg. Co., Inc	P.O. Box 579, Conover, NC 38613	21–Mar–2000	Knitted industrial work gloves.
Precision Plus, Inc	1056–M Pine Island Road, Cape Coral, FL 33909.	21–Mar–2000	Rivets, screws and connectors.
Environmental Technologies, Inc	219 Frontage Road North, Pacifica, WA 98047.	22–Mar–2000	Vacuum fish and centrifugal pumps and parts.
SIFCO Industries, Inc	970 East 64th Street, Cleveland, OH 44103.	27–Mar–2000	Metal discs, actuators, gears and housings for hydraulic engine systems.
Aly–wear, Inc	400 West Main Street, Ephrata, PA 17522.	28–Mar–2000	Ladies dresses and ensembles.
McArthur Industries, Inc. dba Cohn Athletic Service Co.	10500 Kahlmeyer Drive, St. Louis, MO 63132.	28–Mar–2000	Athletic team jerseys, shorts and safety equipment.
Gichner Shelter Systems	490 East Locust Street, Dallastown, PA 17313.	03–Apr–2000	Metal shelters to house communication equipment for government and commercial use.
Catamount Pellet Fuel Corporation	60 Printworks Drive, Adams, MA 01220	31–Mar–2000	Wood pellets for use in residential heating units.
Pittsfield Weaving Company, Inc	1 Fayette Street, Pittsfield, NH 03263	31–Mar–2000	Woven labels and tags.
Shenango Industries, Inc	1200 College Avenue, Terre Haute, IN 47802.	31–Mar–2000	Large diameter, metal and steel, seamless tubes.
Coulter Steel & Forge Co	P.O. Box 8008, Emeryville, CA 94662	03–Apr–2000	Nuclear reactor and fluid power pump parts.
Aro-Sac, Inc	1 Warren Avenue, North Providence, RI 02911.	03–Apr–2000	Earring clips, posts and pads.

LIST OF PETITION ACTION BY TRADE ADJUSTMENT ASSISTANCE FOR PERIOD 03/16/2000–04/14/2000—Continued

Firm name	Address	Date petition accepted	Product
Newman Flange & Fitting Co	P.O. Box 905, Newman, CA 95360	03–Apr–2000	Flanges of titanium, stainless steel and aluminum.
M.G.M. Apparel, Inc	1560 San Fernanco Road, Los Angeles, CA 90065.	03–Apr–2000	Women casual tops, pants and skirts of cotton.
Lorrich Industries, Inc	9265 State Highway 89, Cavalier, ND 58220.	03–Apr–2000	Bins and hoppers used for agricultural or horticultural purposes.
Cobra Specialty Products, Inc	4112 North Main, Hwy 174S, Joshua, Texas 76058.	04–Apr–2000	Wood cabinets and children's furniture and toys.
Thompson Dental Manufacturing Company, Inc.	1201 South 6th West, Missoula, MT 59801.	05–Apr–2000	Dental hand instruments.
Philadelphia Cervical Collar Company	I–295 Industrial Center, Westville, NJ 08093.	11–Apr–2000	Post surgery cervical and emergency medical extrication collars.
Fitchburg Pattern and Model Co., Inc	21 Myrtle Avenue, Fitchburg, MA 01420	14–Apr–2000	Patterns and molds for the casting industry.

The petitions were submitted pursuant to Section 251 of the Trade Act of 1974 (19 U.S.C. 2341). Consequently, the United States Department of Commerce has initiated separate investigations to determine whether increased imports into the United States of articles like or directly competitive with those produced by each firm contributed importantly to total or partial separation of the firm's workers, or threat thereof, and to a decrease in sales or production of each petitioning firm.

Any party having a substantial interest in the proceedings may request a public hearing on the matter. A request for a hearing must be received by Trade Adjustment Assistance, Room 7315, Economic Development Administration, U.S. Department of Commerce, Washington, D.C. 20230, no later than the close of business of the tenth calendar day following the publication of this notice.

The Catalog of Federal Domestic Assistance official program number and title of the program under which these petitions are submitted is 11.313, Trade Adjustment Assistance.

Dated: April 19, 2000.

Anthony J. Meyer,

Coordinator, Trade Adjustment and Technical Assistance.

[FR Doc. 00–10236 Filed 4–24–00; 8:45 am]

BILLING CODE 3510–24–U

DEPARTMENT OF COMMERCE

International Trade Administration

[A–580–815 & A–580–816]

Notice of Amended Final Results of Antidumping Duty Administrative Reviews: Certain Cold-Rolled and Corrosion-Resistant Carbon Steel Flat Products From Korea

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of Amendment to Final Results of Antidumping Duty Administrative Reviews.

SUMMARY: The Department of Commerce (''Department'') is amending its final results of reviews, published March 13, 2000, of the antidumping duty orders on cold-rolled and corrosion-resistant carbon steel flat products from Korea, to reflect the correction of ministerial errors in those final results. The period covered by these amended final results is August 1, 1997 through July 31, 1998.

EFFECTIVE DATE: April 25, 2000.

FOR FURTHER INFORMATION CONTACT: Juanita Chen (Dongbu), Becky Hagen (the POSCO Group), Robert Bolling, or James Doyle, Enforcement Group III, Office 9, Import Administration, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue, N.W., Washington, D.C. 20230, telephone 202–482–0409 (Chen), 202–482–3362 (Hagen), 202–482–3434 (Bolling), or 202–482–0159 (Doyle), fax 202–482–1388.

SUPPLEMENTARY INFORMATION:

Applicable Statute

Unless otherwise indicated, all citations to the Tariff Act of 1930 (''Act'') are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Act by the Uruguay Round Agreements Act (''URAA''). In addition, unless otherwise indicated, all citations to the Department's regulations are to the regulations at 19 CFR Part 351 (1998).

Scope of the Reviews

The review of ''certain cold-rolled carbon steel flat products'' covers cold-rolled (cold-reduced) carbon steel flat-rolled products, of rectangular shape, neither clad, plated nor coated with metal, whether or not painted, varnished or coated with plastics or other nonmetallic substances, in coils (whether or not in successively superimposed layers) and of a width of 0.5 inch or greater, or in straight lengths which, if of a thickness less than 4.75 millimeters, are of a width of 0.5 inch or greater and which measures at least 10 times the thickness or if of a thickness of 4.75 millimeters or more are of a width which exceeds 150 millimeters and measures at least twice the thickness, as currently classifiable in the Harmonized Tariff Schedule (''HTS'') under item numbers 7209.15.0000, 7209.16.0030, 7209.16.0060, 7209.16.0090, 7209.17.0030, 7209.17.0060, 7209.17.0090, 7209.18.1530, 7209.18.1560, 7209.18.2550, 7209.18.6000, 7209.25.0000, 7209.26.0000, 7209.27.0000, 7209.28.0000, 7209.90.0000, 7210.70.3000, 7210.90.9000, 7211.23.1500, 7211.23.2000, 7211.23.3000, 7211.23.4500, 7211.23.6030, 7211.23.6060, 7211.23.6085, 7211.29.2030, 7211.29.2090, 7211.29.4500, 7211.29.6030, 7211.29.6080, 7211.90.0000, 7212.40.1000, 7212.40.5000, 7212.50.0000, 7215.50.0015, 7215.50.0060, 7215.50.0090, 7215.90.5000, 7217.10.1000, 7217.10.2000,

7217.10.3000, 7217.10.7000, 7217.90.1000, 7217.90.5030, 7217.90.5060, 7217.90.5090. Included in this review are flat-rolled products of nonrectangular cross-section where such cross-section is achieved subsequent to the rolling process (*i.e.,* products which have been ''worked after rolling'')—for example, products which have been beveled or rounded at the edges. Excluded from this review is certain shadow mask steel, i.e., aluminum-killed, cold-rolled steel coil that is open-coil annealed, has a carbon content of less than 0.002 percent, is of 0.003 to 0.012 inch in thickness, 15 to 30 inches in width, and has an ultra flat, isotropic surface.

The review of ''certain corrosion-resistant carbon steel flat products'' covers flat-rolled carbon steel products, of rectangular shape, either clad, plated, or coated with corrosion-resistant metals such as zinc, aluminum, or zinc-, aluminum-, nickel- or iron-based alloys, whether or not corrugated or painted, varnished or coated with plastics or other nonmetallic substances in addition to the metallic coating, in coils (whether or not in successively superimposed layers) and of a width of 0.5 inch or greater, or in straight lengths which, if of a thickness less than 4.75 millimeters, are of a width of 0.5 inch or greater and which measures at least 10 times the thickness or if of a thickness of 4.75 millimeters or more are of a width which exceeds 150 millimeters and measures at least twice the thickness, as currently classifiable in the HTS under item numbers 7210.30.0030, 7210.30.0060, 7210.41.0000, 7210.49.0030, 7210.49.0090, 7210.61.0000, 7210.69.0000, 7210.70.6030, 7210.70.6060, 7210.70.6090, 7210.90.1000, 7210.90.6000, 7210.90.9000, 7212.20.0000, 7212.30.1030, 7212.30.1090, 7212.30.3000, 7212.30.5000, 7212.40.1000, 7212.40.5000, 7212.50.0000, 7212.60.0000, 7215.90.1000, 7215.90.3000, 7215.90.5000, 7217.20.1500, 7217.30.1530, 7217.30.1560, 7217.90.1000, 7217.90.5030, 7217.90.5060, 7217.90.5090. Included in this review are flat-rolled products of nonrectangular cross-section where such cross-section is achieved subsequent to the rolling process (*i.e.,* products which have been ''worked after rolling'')—for example, products which have been beveled or rounded at the edges. Excluded from this review are flat-rolled steel products either plated or coated with tin, lead, chromium, chromium oxides, both tin and lead (''terne plate''), or both chromium and chromium oxides (''tin-free steel''), whether or not painted, varnished or coated with plastics or other nonmetallic substances in addition to the metallic coating. Also excluded from this review are clad products in straight lengths of 0.1875 inch or more in composite thickness and of a width which exceeds 150 millimeters and measures at least twice the thickness. Also excluded from this review are certain clad stainless flat-rolled products, which are three-layered corrosion-resistant carbon steel flat-rolled products less than 4.75 millimeters in composite thickness that consist of a carbon steel flat-rolled product clad on both sides with stainless steel in a 20%–60%–20% ratio.

These HTS item numbers are provided for convenience and U.S. Customs purposes. The written descriptions remain dispositive.

Amendment of Final Results

On March 13, 2000, the Department published the final results of its administrative reviews of the antidumping duty orders on certain cold-rolled and corrosion-resistant carbon steel flat products from Korea, for the period August 1, 1997 through July 31, 1998. See Certain Cold-Rolled and Corrosion-Resistant Carbon Steel Flat Products from Korea: Final Results of Antidumping Duty Administrative Reviews, 65 FR 13359 (March 13, 2000) (''final results''). The reviews covered shipments of subject merchandise by Dongbu Steel Co., Ltd. (''Dongbu''), Union Steel Manufacturing Co., Ltd. (''Union''), and Pohang Iron and Steel Co., Ltd. (''POSCO''). (POSCO and the companies collapsed with POSCO (Pohang Coated Steel Co., Ltd. (''POCOS'') and Pohang Steel Industries Co., Ltd. (''PSI'')), are collectively referred to as ''the POSCO Group''.)

On March 14, 2000, the POSCO Group submitted a clerical error allegation. On March 15, 2000, Petitioners alleged ministerial errors in the final results for Dongbu. On March 20, 2000, Dongbu responded to Petitioners' allegations. The allegations and rebuttal comments were filed in a timely fashion.

Dongbu

Comment 1: Petitioners argue that the Department erred in its calculations for corrosion-resistant products by incorrectly setting the comparison window of time for matching U.S. sales with home market sales. Dongbu argues that the Department's programming on this issue in the final results remains the same as it was in the preliminary results. Dongbu argues that by failing to raise the issue in their case brief, Petitioners are barred from raising the issue now.

Department's Position: After a review of the allegation and response, we agree with Petitioners and have corrected the comparison window in our program. For the computer code we used to correct this ministerial error, see the Memorandum from Juanita Chen to Edward Yang, dated March 22, 2000 (''*Amended Final Results Analysis Memorandum*''), a public version of which is available in the Central Records Unit, Room B–099 of the Department of Commerce building, 14th Street and Constitution Ave, N.W., Washington, D.C.

Comment 2: Petitioners argue that the Department erred in its calculations for corrosion-resistant products by excluding from its analysis certain home market sales which should have been included because the Department compared prices for those sales in U.S. dollars to an amount in Korean won for purposes of the arm's length test. Petitioners state that the Department should amend its final results to convert the home market price in U.S. dollars to Korean won before determining whether such sales should be excluded from its margin calculation. Dongbu argues that the Department's programming on this issue in the final results remains the same as it was in the preliminary results. Dongbu argues that by failing to raise the issue in their case brief, Petitioners are barred from raising the issue now.

Department's Position: We agree with Petitioners. The home market price values reported in U.S. dollars should have been converted to Korean won before those values were compared to an amount in Korean won for the purposes of determining which home market sales should be eliminated because, *inter alia,* they were not made at arm's length. Accordingly, we have converted these home market sales from U.S. dollars to Korean won before determining which home market sales to exclude from our margin calculation. For the computer code we used to correct this ministerial error, see the *Amended Final Results Analysis Memorandum,* a public version of which is available in the Central Records Unit, Room B–099 of the Department of Commerce building, 14th Street and Constitution Ave, N.W., Washington, D.C.

POSCO

Comment 3: The POSCO Group argues that the Department erred in its calculations for cold-rolled products by

incorrectly matching the quality physical characteristic for home market and U.S. sales.

Department's Position: We agree with the POSCO Group and have corrected our model match program to reflect the proper quality physical matching characteristic for the home and U.S. markets. For the computer code we used to correct this ministerial error, see the Memorandum from Becky Hagen to Edward Yang, dated March 21, 2000, a public version of which is available in the Central Records Unit, Room B–099 of the Department of Commerce building, 14th Street and Constitution Ave, N.W., Washington, D.C.

Amended Final Results of Review

As a result of the corrections, we have determined that duty absorption has occurred with respect to the percentages of sales shown below which were made through Respondents' U.S. affiliates and which had positive dumping margins:

Producer/manufacturer/exporter	Percentage of U.S. affiliate's sales with dumping margins
Certain Cold-Rolled Carbon Steel Flat Products: The POSCO Group	1.16
Certain Corrosion-Resistant Carbon Steel Flat Products:	
Dongbu	20.68
The POSCO Group	6.85

The percentages for Union remain unchanged from the final results. Additionally, we have determined that the following weighted-average margins exist for the period August 1, 1997 through July 31, 1998:

Producer/manufacturer/exporter	Weighted-average percent margin
Certain Cold-Rolled Carbon Steel Flat Products:	
Dongbu	0.00
The POSCO Group	0.10
Certain Corrosion-Resistant Carbon Steel Flat Products:	
Dongbu	1.42
The POSCO Group	0.68

The weighted-average margins for Union remain unchanged from the final results.

The Department shall determine, and the U.S. Customs Service (''Customs'') shall assess, antidumping duties on all appropriate entries. In accordance with 19 CFR 351.212(b), we have calculated exporter/importer-specific assessment rates. With respect to both export price and constructed export price sales, we divided the total dumping margins for the reviewed sales by the total entered value of those reviewed sales for each importer. We will direct Customs to assess the resulting percentage margins against the entered Customs values for the subject merchandise on each of that importer's entries under the relevant order during the review period. Notwithstanding the previous sentence, and pursuant to 19 CFR 351.106(c)(2), we will instruct Customs to liquidate without regard to antidumping duties all entries of subject merchandise made during the August 1, 1997 through July 31, 1998 review period which were made by any person for which the importer-specific assessment rate calculated in accordance with 19 CFR 351.212(b)(1) is less than 0.5 percent *ad valorem,* or the equivalent specific rate.

Cash Deposit Requirements

The following deposit requirements will be effective upon publication of this notice of amended final results of administrative reviews for all shipments of cold-rolled and corrosion-resistant carbon steel flat products from Korea entered, or withdrawn from warehouse, for consumption on or after the date of publication, as provided by section 751(a)(1) of the Act: (1) The cash deposit rates for the reviewed companies will be the rates shown above except that, for firms whose weighted-average margins are less than 0.5 percent and therefore *de minimis,* the Department shall require no deposit of estimated antidumping duties; (2) for previously reviewed or investigated companies not listed above, the cash deposit rate will continue to be the company-specific rate published for the most recent period; (3) if the exporter is not a firm covered in this review, a prior review, or the original less than fair value (''LTFV'') investigation, but the manufacturer is, the cash deposit rate will be the rate established for the most recent period for the manufacturer of the merchandise; and (4) the cash deposit rate for all other manufacturers or exporters will continue to be 14.44 percent (for certain cold-rolled carbon steel flat products) or 17.70 percent (for certain corrosion-resistant carbon steel flat products). These rates are the ''all others'' rates from the LTFV investigations. See Antidumping Duty Orders on Certain Cold-Rolled Carbon Steel Flat Products and Certain Corrosion-Resistant Carbon Steel Flat Products from Korea, 58 FR 44159 (August 19, 1993).

These deposit requirements shall remain in effect until publication of the final results of the next administrative review.

This notice also serves as a final reminder to importers of their responsibility under 19 CFR 351.402(f) to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of doubled antidumping duties.

This notice also serves as the only reminder to parties subject to administrative protective orders (''APO'') of their responsibility concerning the return or destruction of proprietary information disclosed under APO in accordance with 19 CFR 351.305 or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and terms of an APO is a violation which is subject to sanction.

We are issuing and publishing this determination and notice in accordance with sections 751(a)(1) and 777(i) of the Act.

Dated: April 14, 2000.

Troy H. Cribb,

Acting Assistant Secretary for Import Administration.

[FR Doc. 00–10300 Filed 4–24–00; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–588–852]

Notice of Final Determination of Sales at Less Than Fair Value: Structural Steel Beams From Japan

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

EFFECTIVE DATE: April 25, 2000.

FOR FURTHER INFORMATION CONTACT: Juanita H. Chen or Robert Bolling, Import Administration, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue, N.W., Washington, DC 20230; telephone 202–482–0409 and 202–482–3434, respectively.

The Applicable Statute and Regulations

Unless otherwise indicated, all citations to the statute are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Tariff Act of 1930 (''Act'') by the Uruguay Round Agreements Act (''URAA''). In addition, unless otherwise indicated, all citations to the

Department regulations are to the regulations at 19 CFR Part 351 (April 1999).

Final Determination

We determine that Structural Steel Beams (''Structurals'') from Japan are being, or are likely to be, sold in the United States at less than fair value (''LTFV''), as provided in Section 735 of the Act. The estimated margins are shown in the ''Continuation of Suspension of Liquidation'' section of this notice.

Case History

On February 11, 2000, we published in the **Federal Register** the preliminary determination in this investigation. See Notice of Preliminary Determination of Sales at Less Than Fair Value: Structural Steel Beams from Japan, 65 FR 6992 (February 11, 2000) (''Preliminary Determination''). No interested parties have filed case briefs or rebuttal briefs on the Preliminary Determination and no request for a hearing has been received by the Department.

Scope of Investigation

For purposes of this investigation, the products covered are doubly-symmetric shapes, whether hot- or cold-rolled, drawn, extruded, formed or finished, having at least one dimension of at least 80 mm (3.2 inches or more), whether of carbon or alloy (other than stainless) steel, and whether or not drilled, punched, notched, painted, coated, or clad. These products (''Structural Steel Beams'') include, but are not limited to, wide-flange beams (''W'' shapes), bearing piles (''HP'' shapes), standard beams (''S'' or ''I'' shapes), and M-shapes.

All products that meet the physical and metallurgical descriptions provided above are within the scope of this investigation unless otherwise excluded. The following products, are outside and/or specifically excluded from the scope of this investigation:

- Structural steel beams greater than 400 pounds per linear foot or with a web or section height (also known as depth) over 40 inches.

The merchandise subject to this investigation is classified in the Harmonized Tariff Schedule of the United States (''HTSUS'') at subheadings: 7216.32.0000, 7216.33.0030, 7216.33.0060, 7216.33.0090, 7216.50.0000, 7216.61.0000, 7216.69.0000, 7216.91.0000, 7216.99.0000, 7228.70.3040, 7228.70.6000. Although the HTSUS subheadings are provided for convenience and Customs purposes, the written description of the merchandise under investigation is dispositive.

Period of Investigation

The period of investigation (''POI'') is July 1, 1998 through June 30, 1999.

Facts Available

In the Preliminary Determination, the Department based the dumping margins for respondents Kawasaki Steel Corporation, Nippon Steel Corporation, NKK Corporation/Toa Steel Co., Ltd., and Sumitomo Metals Industries, Ltd., on facts otherwise available under Section 776(a)(2)(A) of the Act because these respondents failed to participate in the investigation and failed to provide information requested by the Department needed to calculate a dumping margin as detailed in the Preliminary Determination. The Department based the dumping margins for respondent Tokyo Steel Manufacturing Co., Ltd. on facts otherwise available under Section 776(a)(2)(B) of the Act because this respondent failed to provide the information requested by the Department in the form or manner requested as detailed in the Preliminary Determination. The Department based the dumping margins for respondent Topy Industries, Limited, on facts otherwise available under Section 776(a)(2)(A) of the Act because this respondent only provided information responding to Section A of the Department's antidumping questionnaire and failed to provide any other information requested by the Department needed to calculate a dumping margin as detailed in the Preliminary Determination.

In selecting from among the facts otherwise available, section 776(b) of the Act provides that adverse inferences may be used when a party fails to cooperate by not acting to the best of its ability to comply with the Department's requests for information. As detailed in the Preliminary Determination, the Department has determined that the use of adverse inferences is warranted for all respondents because all respondents have failed to cooperate to the best of their abilities in this investigation.

Further, section 776(b) of the Act states that an adverse inference may include reliance on information derived from the petition or any other information placed on the record. See also ''Statement of Administrative Action'' (''SAA'') accompanying the URAA, H.R. Rep. No. 103–316, 829–831 (1994). Pursuant to Section 776(b) of the Act, the Department applied the highest margin calculated from the information placed on the record by petitioners on August 13, 1999 and November 12, 1999. We continue to find this margin corroborated, pursuant to Section 776(c) of the Act, for the reasons discussed in the Preliminary Determination. No interested parties have objected to the use of adverse facts available for the mandatory respondents in this investigation, nor to the Department's choice of facts available. Furthermore, the Department has received no request for a hearing in this investigation. Accordingly, for its final determination, the Department is continuing use of the highest margin alleged by petitioners for all non-responding mandatory respondents in this investigation.

The All-Others Rate

No interested parties have filed case briefs or rebuttal briefs on this issue. Accordingly, the Department is continuing to base the ''all-others'' rate on the simple average of margins submitted to the record by petitioners on August 13, 1999 and November 12, 1999 which is 31.98 percent, for the reasons discussed in the Preliminary Determination.

Continuation of Suspension of Liquidation

In accordance with Section 735(c)(1)(B) of the Act, we are directing the U.S. Customs Service (''Customs'') to continue to suspend liquidation of all entries of subject merchandise from Japan that are entered, or withdrawn from warehouse, for consumption on or after February 11, 2000, the date of publication of the Preliminary Determination in the **Federal Register**.

We will instruct Customs to require a cash deposit or posting of a bond for each entry equal to the margins shown below. These suspension of liquidation instructions will remain in effect until further notice. The weighted-average dumping margins are as follows:

Exporter/manufacturer	Weighted-average margin (percentage)
Kawasaki Steel Corporation	65.21
Nippon Steel Corporation	65.21
NKK Corporation/Toa Steel Co., Ltd	65.21
Sumitomo Metals Industries, Ltd	65.21
Tokyo Steel Manufacturing Co., Ltd	65.21
Topy Industries, Limited	65.21
All Others	31.98

ITC Notification

In accordance with Section 735(d) of the Act, we have notified the International Trade Commission (''ITC'') of our determination. As our final

determination is affirmative, the ITC will, within 45 days, determine whether these imports are materially injuring, or threaten material injury to, the U.S. industry. If the ITC determines that material injury, or threat of material injury does not exist, the proceeding will be terminated and all securities posted will be refunded or canceled. If the ITC determines that such injury does exist, the Department will issue an antidumping duty order directing Customs officials to assess antidumping duties on all imports of the subject merchandise entered, or withdrawn from warehouse, for consumption on or after the effective date of the suspension of liquidation.

This determination is issued and published in accordance with Sections 735(d) and 777(i)(1) of the Act.

Dated: April 14, 2000.

Troy H. Cribb,

Acting Assistant Secretary for Import Administration.

[FR Doc. 00–10299 Filed 4–24–00; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 041900B]

Mid-Atlantic Fishery Management Council; Public Meetings

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of public meetings.

SUMMARY: The Mid-Atlantic Fishery Management Council (Council) and its Comprehensive Management Committee, Law Enforcement Committee, Information & Education Committee, Habitat Committee, Large Pelagics Committee, Executive Committee, and Demersal Committee as a Council Committee of the Whole together with the Atlantic States Marine Fisheries Commission's (ASMFC) Summer Flounder, Scup, and Black Sea Bass Board, will hold a public meeting.

DATES: The meetings will be held on Tuesday, May 9, 2000 to Thursday, May 11, 2000. See **SUPPLEMENTARY INFORMATION** for specific dates and times.

ADDRESSES: These meetings will be held at the Sheraton Inn, N. duPont Highway, Dover, DE; telephone: 302–678–8500.

Council address: Mid-Atlantic Fishery Management Council, 300 S. New Street, Dover, DE 19904, telephone: 302–674–2331.

FOR FURTHER INFORMATION CONTACT: Daniel T. Furlong, Executive Director, Mid-Atlantic Fishery Management Council; telephone: 302–674–2331, ext. 19.

SUPPLEMENTARY INFORMATION: On Tuesday, May 9, 2000, from 9:00 a.m. until noon, the Comprehensive Management Committee will meet.

The Law Enforcement Committee will meet from 10:00 a.m. until 11:00 a.m.

The Information & Education Committee will meet from 11:00 a.m. until noon.

The Habitat Committee will meet from 1:00–5:00 p.m.

On Wednesday, May 10, 2000, from 8:00–9:00 a.m., the Large Pelagics Committee will meet.

The Executive Committee will meet from 9:00–10:00 a.m.

Council convenes at 10:00 a.m. and meets with the Atlantic States Marine Fisheries Commission's Summer Flounder, Scup, and Black Sea Bass Board from 10:00 a.m. until 5:00 p.m.

On Thursday, May 11, 2000, Council will be in session from 8:00 a.m. until 1:00 p.m.

Agenda items for this meeting are: Review and modify draft framework action regarding research quota set asides, review and rank Council research priorities, and discuss summer flounder workshop design. Review nomination process for quarterly Law Enforcement recognitions. Discuss use of teleconferencing in lieu of meetings, explore possibilities for future Information & Education presentations, and discuss ideas for the June Newsletter. Review and discuss Minerals Management Service Environmental Assessment for sand mining (NJ south to VA), discuss NMFS general concurrence process regarding Council Fishery Management Plans (FMPs), evaluate performance of NMFS success in use of elevation process with Corps of Engineers, and review Long Island Sound Environmental Impact Statement regarding ocean disposal sites. Develop recommendations regarding NMFS proposed division line for north-south Atlantic bluefin tuna angling categories. Discuss possible decoupling of joint Dogfish and Monkfish FMPs, and review composition of monitoring committees. Initiate action to amend the summer flounder section of the FMP by considering perpetuation of conservation equivalency (or not), and amend the scup section of the FMP by revising the process used for allocation of total allowable catch, discards, and total allowable levels, and by possibly re-establishing state-by-state quota allocations. Address scup recreational specifications for 2000 by determining a response to NMFS' rejection of 50 fish possession limit. The Council will also approve minutes from its March, 2000 meeting, review and comment on March meeting actions, and receive organizational reports from the NMFS Regional Administrator, NMFS Science Center Director, NOAA Office of General Counsel, U.S. Fish & Wildlife, Federal Enforcement units and the ASMFC. It will also receive Committee reports from the following committees: New England Council, South Atlantic Council, Monkfish, Comprehensive Management, Law Enforcement, Information & Education, Habitat, Large Pelagics, and Executive.

Although non-emergency issues not contained in this agenda may come before the Council for discussion, such issues may not be the subject of formal Council action during this meeting. Council action will be restricted to those issues specifically listed in this notice and any issues arising after publication of this notice that require emergency action under section 305(c) of the Magnuson-Stevens Act, provided the public has been notified of the Council's intent to take final actions to address such emergencies.

Request for Comment on Experimental Fishing Proposal

On May 11, 2000, the NMFS Northeast Regional Administrator will request oral public comment on a proposed experimental fishery that requires issuance of Experimental Fishing Permits (EFPs). The public may comment at that time, or may submit comments in writing. Written comments must be received by May 11, 2000 and should be submitted to: Patricia Kurkul, Regional Administrator, NMFS, Northeast Regional Office, 1 Blackburn Drive, Gloucester, MA 01930. Written comments may be submitted by facsimile (fax) to 978–281–9135, but may not be submitted via e-mail or the Internet. The proposal is summarized below.

The NMFS Northeast Fisheries Science Center (NEFSC) proposes to conduct cooperative research with industry that would require two vessels to conduct Illex Squid (*Illex illecebrosus*) surveys in the U.S. Exclusive Economic Zone on the edge of the continental shelf between northeastern Georges Bank and Cape Fear, North Carolina (approximately 35°–41° latitude). The purpose of the surveys is to calculate a pre-fishery abundance estimate and improve data

input to stock assessments. Vessel operations would be under the supervision and control of NEFSC scientific personnel.

The stratified random sampling will occur at depths of 60–100 fathoms and 101–200 fathoms outside of all multispecies closed areas (Closed Area II and Nantucket Lightship Closed Area). Participating commercial *Illex* Squid vessels will employ standardized, scientific towing and sampling protocols. Towing will occur at 100 predetermined stations at one half hour intervals and a tow speed of 3.5 knots. The codend mesh size of the liners will measure 1 inch (25.4 mm) diamond throughout the codend circumference for a total length of 30 feet.

The target species is *Illex* Squid, however some bycatch may be encountered. Any and all species landed for commercial purposes will be done so in accordance with the respective fishery requirements and landing restrictions. *Illex* length, weight and age data will be recorded along with other physical parameters (bottom temperature, depth, vessel speed and location data). Total catch weight information will be recorded for all other species retained. The survey will commence on or about May 20, 2000, and will continue through May 31, 2000. Timing is critical to survey success, which intends to capture the spring migration of *Illex* onto the continental shelf.

EFPs would be issued to two participating Federally permitted *Illex* Squid vessels to exempt them from the gear restrictions of the Atlantic Mackerel, Squid and Butterfish Fishery Management Plan.

Special Accommodations

These meetings are physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Joanna Davis at the Council (see **ADDRESSES**) at least 5 days prior to the meeting date.

Dated: April 20, 2000.

Richard W. Surdi,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 00–10303 Filed 4–24–00; 8:45 am]

BILLING CODE 3510–22–F

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 041900A]

Pacific Fishery Management Council; Public Meeting

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of public meeting.

SUMMARY: The Pacific Fishery Management Council's (Council) Groundfish Stock Assessment Review (STAR) Panel will hold a work session which is open to the public.

DATES: The STAR Panel for bank rockfish and darkblotched rockfish will meet beginning at 1:00 p.m., May 15, 2000 and continue through May 19 until business is completed. Except for Monday, May 15, 2000, the STAR Panel will meet each day from 8 a.m. to 5 p.m.

ADDRESSES: The STAR Panel for bank rockfish and darkblotched rockfish will be held in The Marilyn Potts Guin Library, Hatfield Marine Science Center, Oregon State University, 2030 Marine Science Drive, Newport, OR 97365.

Council address: Pacific Fishery Management Council, 2130 SW Fifth Avenue, Suite 224, Portland, OR 97201.

FOR FURTHER INFORMATION CONTACT: Dan Waldeck, Fishery Management Analyst; telephone: (503) 326–6352.

SUPPLEMENTARY INFORMATION: The purpose of the meeting is to review draft stock assessment documents for bank rockfish and darkblotched rockfish and any other pertinent information, work with stock assessment teams to make necessary revisions, and produce STAR Panel reports for use by the Council family and other interested persons.

Although non-emergency issues not contained in the STAR Panel agenda may come before the panel for discussion, those issues may not be the subject of formal panel action during this meeting. Panel action will be restricted to those issues specifically listed in this notice, and any issues arising after publication of this notice that require emergency action under section 305(c) of the Magnuson-Stevens Fishery Conservation and Management Act, provided the public has been notified of the panel's intent to take final action to address the emergency.

Special Accommodations

The meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Mr. John Rhoton at (503) 326–6352 at least 5 days prior to the meeting date.

Dated: April 19, 2000.

Richard W. Surdi,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 00–10301 Filed 4–24–00; 8:45 am]

BILLING CODE 3510–22–F

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 041700A]

Marine Mammals; Photography Permit (File No. 980–1570)

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Receipt of application.

SUMMARY: Notice is hereby given that Mr. Clive Lonsdale, Lonsdale Films, 113 Fakenham Road, Great Ryburg, Norfolk NR21 7AQ, United Kingdom, has applied in due form for a permit to take orcas (*Orcinus orca*) and gray whales (*Eschrichtius robustus*) for purposes of commercial photography.

DATES: Written comments must be received on or before May 25, 2000.

ADDRESSES: The application and related documents are available for review upon written request or by appointment in the following office(s):

Permits Division, Office of Protected Resources, NMFS, 1315 East-West Highway, Room 13130, Silver Spring, MD 20910 (301/713–2289); and

Regional Administrator, Alaska Region, NMFS, 709 W 9th Street, Federal Building, Room 461, P.O. Box 21668, Juneau, AK 99802 (907–586–7235).

SUPPLEMENTARY INFORMATION: The subject permit is requested under the authority of § 104(c)(6) of the Marine Mammal Protection Act of 1972, as amended (16 U.S.C. 1361 *et seq.*), the Regulations Governing the Taking and Importing of Marine Mammals (50 CFR part 216). Section 104(c)(6) provides for photography for educational or commercial purposes involving non-endangered and non-threatened marine mammals in the wild. NMFS is currently working on proposed regulations to implement this provision. However, in the meantime, NMFS has received and is processing this request as a ''pilot'' application for Level B Harassment of non-listed and non-

depleted marine mammals for photographic purposes.

The applicant seeks authorization to inadvertently harass up to 10 orcas (*Orcinus orca*) and 2 gray whales (*Eschrichtius robustus*) during the course of filming activities in the Alaskan waters of the Bering Strait over a one year period.

Written comments or requests for a public hearing on this application should be mailed to the Chief, Permits and Documentation Division, F/PR1, Office of Protected Resources, NMFS, 1315 East-West Highway, Room 13705, Silver Spring, MD 20910. Those individuals requesting a hearing should set forth the specific reasons why a hearing on this particular request would be appropriate.

Comments may also be submitted by facsimile at (301) 713–0376, provided the facsimile is confirmed by hard copy submitted by mail and postmarked no later than the closing date of the comment period. Please note that comments will not be accepted by e-mail or by other electronic media.

Concurrent with the publication of this notice in the **Federal Register**, NMFS is forwarding copies of this application to the Marine Mammal Commission and its Committee of Scientific Advisors.

Dated: April 18, 2000.

Ann D. Terbush,

Chief, Permits and Documentation Division, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 00–10302 Filed 4–24–00; 8:45 am]

BILLING CODE 3510–22–F

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 041100A]

Marine Mammals; File No. 978–1567

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Receipt of application.

SUMMARY: Notice is hereby given that Paul E. Nachtigall, Ph.D., Director, Marine Mammal Research Program, Hawaii Institute of Marine Biology, University of Hawaii, P.O. Box 1106, Kailua, Hawaii 96734, has applied in due form for a permit to take two species of cetaceans for purposes of scientific research.

DATES: Written or telefaxed comments must be received on or before May 25, 2000.

ADDRESSES: The application and related documents are available for review upon written request or by appointment in the following office(s):

Permits and Documentation Division, Office of Protected Resources, NMFS, 1315 East-West Highway, Room 13705, Silver Spring, MD 20910 (301/713–2289);

Regional Administrator, Southwest Region, NMFS, 501 West Ocean Blvd., Suite 4200, Long Beach, CA 90802–4213 (562/980–4027); and

Protected Species Program Manager, Pacific Islands Area Office, NMFS, NOAA, 1601 Kapiolani Boulevard, Suite 1110, Honolulu, Hawaii 96814–4700 (808/973–2935).

Written comments or requests for a public hearing on this application should be mailed to the Chief, Permits and Documentation Division, F/PR1, Office of Protected Resources, NMFS, 1315 East-West Highway, Room 13705, Silver Spring, MD 20910. Those individuals requesting a hearing should set forth the specific reasons why a hearing on this particular request would be appropriate.

Comments may also be submitted by facsimile at (301) 713–0376, provided the facsimile is confirmed by hard copy submitted by mail and postmarked no later than the closing date of the comment period. Please note that comments will not be accepted by e-mail or by other electronic media.

FOR FURTHER INFORMATION CONTACT: Jeannie Drevenak, 301/713–2289.

SUPPLEMENTARY INFORMATION: The subject permit is requested under the authority of the Marine Mammal Protection Act of 1972, as amended (MMPA; 16 U.S.C. 1361 *et seq.*) and the Regulations Governing the Taking and Importing of Marine Mammals (50 CFR part 216).

The applicant is requesting authorization to conduct scientific research (i.e., investigation of basic hearing processes, low frequency hearing capabilities, and echolocation systems) on two species of captive odontocete cetaceans: four (4) Atlantic bottlenose dolphins (*Tursiops truncatus*) and one (1) false killer whale (*Pseudorca crassidens*). Experimental trials will be conducted to: (1) obtain hearing thresholds and to measure the effects of sound on the hearing of the animals; and (2) obtain information on the dolphins' echolocation systems. The research will be conducted over a five-year period.

Custody of the subject animals would be transferred from the U.S. Navy (SPAWARSYSCEN San Diego) to the University of Hawaii's Marine Mammal Research Program at The Hawaii Institute of Marine Biology. Since the animals are currently housed at the University of Hawaii, the animals' physical location will not change.

In compliance with the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*), an initial determination has been made that the activity proposed is categorically excluded from the requirement to prepare an environmental assessment or environmental impact statement.

Concurrent with the publication of this notice in the **Federal Register**, NMFS is forwarding copies of this application to the Marine Mammal Commission and its Committee of Scientific Advisors.

Dated: April 18, 2000.

Ann D. Terbush,

Chief, Permits and Documentation Division, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 00–10304 Filed 4–24–00; 8:45 am]

BILLING CODE 3510–22–F

COMMODITY FUTURES TRADING COMMISSION

Sunshine Act Meeting

AGENCY HOLDING THE MEETING: Commodity Futures Trading Commission.

TIME AND DATE: 11:00 a.m., Friday, May 5, 2000.

PLACE: 1155 21st St., NW., Washington, DC, 9th Floor Conference Room.

STATUS: Closed.

MATTER TO BE CONSIDERED: Surveillance Matters.

CONTACT PERSON FOR MORE INFORMATION: Jean A. Webb, 202–418–5100.

Jean A. Webb,

Secretary of the Commission.

[FR Doc. 00–10346 Filed 4–21–00; 11:32 am]

BILLING CODE 6351–01–M

COMMODITY FUTURES TRADING COMMISSION

Sunshine Act Meeting

AGENCY HOLDING THE MEETING: Commodity Futures Trading Commission.

TIME AND DATE: 11:00 a.m., Friday, May 12, 2000.

PLACE: 1155 21st St., NW, Washington, DC, 9th Floor Conference Room.

STATUS: Closed.

MATTERS TO BE CONSIDERED: Surveillance matters.

CONTACT PERSON FOR MORE INFORMATION: Jean A. Webb, 202–418–5100.

Jean A. Webb,

Secretary of the Commission.

[FR Doc. 00–10347 Filed 4–21–00; 11:33 am]

BILLING CODE 6351–01–M

COMMODITY FUTURES TRADING COMMISSION

Sunshine Act Meeting

AGENCY HOLDING THE MEETING: Commodity Futures Trading Commission.

TIME AND DATE: 11:00 a.m., Friday, May 19, 2000.

PLACE: 1155 21st St., NW, Washington, DC, 9th Floor Conference Room.

STATUS: Closed.

MATTERS TO BE CONSIDERED: Surveillance matters.

CONTRACT PERSON FOR MORE INFORMATION: Jean A. Webb, 202–418–5100.

Jean A. Webb,

Secretary of the Commission.

[FR Doc. 00–10348 Filed 4–21–00; 11:34 am]

BILLING CODE 6351–01–M

COMMODITY FUTURES TRADING COMMISSION

Sunshine Act Meeting

AGENCY HOLDING THE MEETING: Commodity Futures Trading Commission.

TIME AND DATE: 11:00 a.m., Friday, May 26, 2000.

PLACE: 1155 21st St., NW, Washington, DC, 9th Floor Conference Room.

STATUS: Closed.

MATTERS TO BE CONSIDERED: Surveillance matters.

CONTACT PERSON FOR MORE INFORMATION: Jean A. Webb, 202–418–5100.

Jean A. Webb,

Secretary of the Commission.

[FR Doc. 00–10349 Filed 4–21–00; 11:35 am]

BILLING CODE 6351–01–M

CONSUMER PRODUCT SAFETY COMMISSION

Proposed Collection; Comment Request; Clothing Textiles, Vinyl Plastic Film

AGENCY: Consumer Product Safety Commission.

ACTION: Notice.

SUMMARY: As required by the Paperwork Reduction Act of 1995 (44 U.S.C. chapter 35), the Consumer Product Safety Commission requests comments on a proposed extension of approval of a collection of information from manufacturers and importers of clothing, and textiles and related materials intended for use in clothing. This collection of information is required in regulations implementing the Standard for the Flammability of Clothing Textiles (16 CFR part 1610) and the Standard for the Flammability of Vinyl Plastic Film (16 CFR part 1611). These regulations establish requirements for testing and recordkeeping for manufacturers and importers who furnish guaranties for products subject to the flammability standards for clothing textiles and vinyl plastic film. The Commission will consider all comments received in response to this notice before requesting an extension of approval of this collection of information from the Office of Management and Budget.

DATES: Written comments must be received by the Office of the Secretary not later than June 26, 2000.

ADDRESSES: Written comments should be captioned ''Clothing Textiles and Film, Collection of Information'' and mailed to the Office of the Secretary, Consumer Product Safety Commission, Washington, DC 20207, or delivered to that office, room 502, 4330 East-West Highway, Bethesda, MD, 20814. Written comments may also be sent to the Office of the Secretary by facsimile at (301) 504–0127 or by e-mail at cpsc-os@cpsc.gov.

FOR FURTHER INFORMATION CONTACT: For information about the proposed extension of the collection of information, or to obtain a copy of 16 CFR parts 1610 and 1611, call or write Linda L. Glatz, Office of Planning and Evaluation, Consumer Product Safety Commission, Washington, DC 20207; telephone (301) 504–0416, extension 2226.

SUPPLEMENTARY INFORMATION:

A. Background

Clothing and fabrics intended for use in clothing (except children's sleepwear in sizes 0 through 14) are subject to the Standard for the Flammability of Clothing Textiles (16 CFR part 1610). Clothing made from vinyl plastic film and vinyl plastic film intended for use in clothing (except children's sleepwear in sizes 0 through 14) are subject to the Standard for the Flammability of Vinyl Plastic Film (16 CFR part 1611). These standards prescribe a test to assure that articles of wearing apparel, and fabrics and film intended for use in wearing apparel, are not dangerously flammable because of rapid and intense burning. (Children's sleepwear and fabrics and related materials intended for use in children's sleepwear in sizes 0 through 14 are subject to other, more stringent flammability standards, codified at 16 CFR parts 1615 and 1616.) The flammability standards for clothing textiles and vinyl plastic film were made mandatory by the Flammable Fabrics Act of 1953 (FFA) (Pub. L. 83–88, 67 Stat. 111; June 30, 1953).

Section 8 of the FFA (15 U.S.C. 1197) provides that a person who receives a guaranty in good faith that a product complies with an applicable flammability standard is not subject to criminal prosecution for a violation of the FFA resulting from the sale of any product covered by the guaranty. Section 8 of the FFA requires that a guaranty must be based on ''reasonable and representative tests.'' The Commission estimates that about 1,000 manufacturers and importers of clothing, and of textiles and vinyl film intended for use in clothing, issue guaranties that the products they produce or import comply with the applicable standard.

B. Testing and Recordkeeping

Regulations implementing the flammability standards for clothing textiles and vinyl plastic film prescribe requirements for testing and recordkeeping by firms that issue guaranties. See 16 CFR part 1610, subpart B, and 16 CFR part 1611, subpart B.

The Commission uses the information compiled and maintained by firms that issue these guaranties to help protect the public from risks of injury or death associated with clothing and fabrics and vinyl film intended for use in clothing. More specifically, the information helps the Commission arrange corrective actions if any products covered by a guaranty fail to comply with the applicable standard in a manner that creates a substantial risk of injury or death to the public. The Commission also uses this information to determine whether the requisite testing was performed to support the guaranties.

The Office of Management and Budget (OMB) approved the collection of information in the enforcement regulations implementing the standards for clothing textiles and vinyl plastic film under control number 3041–0024. OMB's most recent extension of approval will expire on July 31, 2000. The Commission proposes to request an extension of approval without change

for the collection of information in those regulations.

C. Estimated Burden

The Commission staff estimates that about 1,000 firms that manufacture or import products subject to the flammability standards for clothing textiles and vinyl plastic film issue guaranties that the products they produce or import comply with the applicable standard. The Commission staff estimates that these standards and implementing regulations will impose an average annual burden of about 101.6 hours on each of those firms. That burden will result from conducting the testing and maintaining records required by the implementing regulations. The total annual burden imposed by the standards and regulations on all manufacturers and importers of clothing textiles and vinyl plastic film will be about 101,600 hours.

The hourly wage for the testing and recordkeeping required by the standards and regulations is about $13.50, for an estimated annual cost to the industry of $1,400,000.

D. Request for Comments

The Commission solicits written comments from all interested persons about the proposed collection of information. The Commission specifically solicits information relevant to the following topics:

- Whether the collection of information described above is necessary for the proper performance of the Commission's functions, including whether the information would have practical utility;
- Whether the estimated burden of the proposed collection of information is accurate;
- Whether the quality, utility, and clarity of the information to be collected could be enhanced; and
- Whether the burden imposed by the collection of information could be minimized by use of automated, electronic or other technological collection techniques, or other forms of information technology.

Dated: April 19, 2000.

Sadye E. Dunn,

Secretary, Consumer Product Safety Commission.

[FR Doc. 00–10212 Filed 4–24–00; 8:45 am]

BILLING CODE 6355–01–P

CONSUMER PRODUCT SAFETY COMMISSION

Submission for OMB Review; Comment Request—Safety Standard for Automatic Residential Garage Door Operators

AGENCY: Consumer Product Safety Commission.

ACTION: Notice.

SUMMARY: In the **Federal Register** of February 9, 2000 (65 FR 6361), the Consumer Product Safety Commission published a notice in accordance with provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. chapter 35) to announce the agency's intention to seek extension of approval of the collection of information in the Safety Standard for Automatic Residential Garage Door Operators (16 CFR part 1211). No comments were received in response to that notice. The Commission now announces that it has submitted to the Office of Management and Budget a request for reinstatement of approval of that collection of information without change for a period of three years from the date of approval.

The Consumer Product Safety Improvement Act of 1990 (Pub. L. 101–608, 104 Stat. 3110) requires all automatic residential garage door openers manufactured after January 1, 1993, to comply with the entrapment protection requirements of UL Standard 325 that were in effect on January 1, 1992. In 1992, the Commission codified the entrapment protection provisions of UL Standard 325 in effect on January 1, 1992, as the Safety Standard for Automatic Residential Garage Door Operators, 16 CFR part 1211, Subpart A. Certification regulations implementing the standard require manufacturers, importers and private labelers of garage door operators subject to the standard to test their products for compliance with the standard, and to maintain records of that testing. Those regulations are codified at 16 CFR part 1211, subparts B and C.

The Commission uses the records of testing and other information required by the certification regulations to determine that automatic residential garage door operators subject to the standard comply with its requirements. The Commission also uses this information to obtain corrective actions if garage door operators fail to comply with the standard in a manner which creates a substantial risk of injury to the public.

Additional Information About the Request for Reinstatement of Approval of a Collection of Information

Agency address: Consumer Product Safety Commission, Washington, DC 20207.

Title of information collection: Safety Standard for Automatic Residential Garage Door Operators, 16 CFR part 1211.

Type of request: Approval of a collection of information.

General description of respondents: Manufacturers, importers, and private labelers of automatic residential garage door operators.

Estimated number of respondents: 22.

Estimated average number of hours per respondent: 40 per year.

Estimated number of hours for all respondents: 880 per year.

Estimated cost of collection for all respondents: $11,880.

Comments: Comments on this request for reinstatement of approval of information collection requirements should be submitted by June 26, 2000, to (1) the Office of Information and Regulatory Affairs, Attn: OMB Desk Officer for CPSC, Office of Management and Budget, Washington DC 20503; telephone: (202) 395–7340, and (2) the Office of the Secretary, Consumer Product Safety Commission, Washington, DC 20207. Written comments may also be sent to the Office of the Secretary by facsimile at (301) 504–0127 or by e-mail at cpsc-os@cpsc.gov.

Copies of this request for reinstatement of the information collection requirements and supporting documentation are available from Linda Glatz, management and program analyst, Office of Planning and Evaluation, Consumer Product Safety Commission, Washington, DC 20207; telephone: (301) 504–0416, ext. 2226.

Dated: April 19, 2000.

Sadye E. Dunn,

Secretary, Consumer Product Safety Commission.

[FR Doc. 00–10211 Filed 4–24–00; 8:45 am]

BILLING CODE 6355–01–P

DEPARTMENT OF EDUCATION.

National Assessment Governing Board; Meeting.

AGENCY: National Assessment Governing Board; Education

ACTION: Notice of Closed and Partially Closed Meetings

SUMMARY: This notice sets forth the schedule and proposed agenda of a

forthcoming meeting of the National Assessment Governing Board. This notice also describes the functions of the Board. Notice of this meeting is required under Section 10(a)(2) of the Federal Advisory Committee Act. This document is intended to notify the general public of their opportunity to attend. Individuals who will need accommodations for a disability in order to attend the meeting (*i.e.* interpreting services, assistive listening devices, materials in alternative format) should notify Mary Ann Wilmer at 202–357–6938 or *mary_ann_wilmer@ed.gov* by no later than April 28, 2000. We will attempt to meet requests after this date, but cannot guarantee availability of the requested accommodation. The meeting site is accessible to individuals with disabilities.

DATES: May 11–13, 2000.

TIME: May 11—Subject Area Committee #2, 3:00–4:30 p.m. (open), 4:30–5:00 p.m. (closed); Achievement Levels Committee, 3:00–5:00 p.m. (open); Executive Committee, 5:30–6:30 p.m. (open), 6:30–7:00 p.m. (closed); May 12—Full Board, 8:30–10:15 a.m. (open); Subject Area Committee #1, 10:30–11:00 a.m. (closed), 11:00 a.m.–12:00 p.m. (open); Design and Methodology Committee, 10:30 a.m.–12:00 p.m. (open); Joint Meeting of Design and Methodology Committee and Subject Area Committee #1, 12:00–12:30 p.m. (open); and Reporting and Dissemination Committee, 10:30 a.m.–12:30 p.m. (open); Full Board, 12:30–4:45 p.m. (open). May 13—Nominations Committee, 8:00–9:00 a.m. (closed); Full Board, 9:00–11:30 a.m. (open), 11:30 a.m.–12:00 p.m. (closed).

LOCATION: Harbor Court Hotel, 350 Light Street, Baltimore, Maryland.

FOR FURTHER INFORMATION CONTACT: Mary Ann Wilmer, Operations Officer, National Assessment Governing Board, 800 North Capitol Street, NW., Suite 825, Washington, DC 20002–4233, Telephone: (202) 357–6938.

SUPPLEMENTARY INFORMATION: The National Assessment Governing Board is established under section 412 of the National Education Statistics Act of 1994 (Title IV of the Improving America's Schools Act of 1994) (Pub. L. 103–382).

The Board is established to formulate policy guidelines for the National Assessment of Educational Progress. The Board is responsible for selecting subject areas to be assessed, developing assessment objectives, identifying appropriate achievement goals for each grade and subject tested, and establishing standards and procedures for interstate and national comparisons. Under P.L. 105–78, the National Assessment Governing Board is also granted exclusive authority over developing the Voluntary National Tests pursuant to contract number RJ97153001.

On May 11, Subject Area Committee #2 will hold a partially closed meeting from 3:00–5:00 p.m. From 4:30–5:00 p.m., the Committee will meet in closed session to review test items for the proposed 8th grade Voluntary National Test in Mathematics. This portion of the meeting must be closed because references will be made to specific items from the assessment and premature disclosure of the information presented for review would be likely to significantly frustrate implementation of a proposed agency action if conducted in open session. Such matters are protected by exemption 9(B) of Section 552b(c) of Title 5 U.S.C. During the open portion of the meeting, 3:00–4:30 p.m., the Committee will hear a briefing on the 2004 NAEP Mathematics Framework Update procurement; and the Committee will view a demonstration of the NAEP Mathematics Online Study.

The Achievement Levels Committee will meet in open session from 3:00–5:00 p.m. to hear updates on the Achievement Levels Study, and a briefing on the report which examines the development of the achievement levels for NAEP assessments over the past decade. In addition, agenda items for this meeting of the Achievement Levels Committee include an update on the commissioned papers addressing the translation of NAEP achievement levels to the Voluntary National Tests.

Also on May 11, the Executive Committee will meet in partially closed session. In open session 5:30–6:30 p.m., the Committee will hear an update on the Voluntary National Tests activities; a briefing on the public version of NAEP frameworks and achievement levels publications; and updates on NAEP secondary analysis grants, and reauthorization. In closed session, 6:30–7:00 p.m., the Committee will hear an update on the development of cost estimates for NAEP (RFPs) and other contract initiatives. This portion of the meeting must be conducted in closed session because public disclosure of this information would likely have an adverse financial effect on the NAEP program. The discussion of this information would be likely to significantly frustrate implementation of a proposed agency action, if conducted in open session. Such matters are protected by exemption 9(B) of Section 552(b) of Title 5 U.S.C.

On May 12, the full Board will convene in open session from 8:30–10:15 a.m. The board will hear a report from the Executive Director of the National Assessment Governing Board; remarks from the Maryland State Superintendent of Schools; and updates on NAEP activities, and issues regarding proposed NAEP incentives and rewards.

Beginning at 10:30 a.m., there will be meetings of the Board's standing committees. Subject Area Committee #1 will meet in partially closed session. From 10:30–11:00 a.m., the Committee will meet in closed session to review secure test items for the proposed 4th grade Voluntary National Test in Reading. This portion of the meeting must be closed because references will be made to specific items from the assessment and premature disclosure of the information presented for review would be likely to significantly frustrate implementation of a proposed agency action if conducted in open session. Such matters are protected by exemption 9(B) of Section 552b(c) of Title 5 U.S.C. In the open portion of the meeting, 11:00 a.m.–12:00 p.m., Subject Area Committee #1 will discuss the NAEP Foreign Language Framework and Specifications.

The Design and Methodology Committee will meet in open session from 10:30 a.m.–12:00 p.m. to hear briefings on the following National Voluntary Tests issues: dual-language testing; and preliminary plans for integrated pilot test design and analysis. Also, the Committee will hear an update on the NAEP writing assessment trend.

From 12:00–12:30 p.m., there will be a joint meeting of the Design and Methodology Committee and Subject Area Committee #1 to discuss the achievement levels on the NAEP Foreign Language Assessment.

The Reporting and Dissemination Committee will meet in open session from 10:30 a.m.–12:30 p.m. The Committee will discuss issues pertaining to the reporting of results for NAEP 2000 and 2002 by private school; schedule for release of future NAEP reports; plan for release of the civics trend assessment; and reporting categories by race in 2002 assessments in response to an OMB directive.

The full Board will reconvene in open session from 12:30–4:30 p.m. There will be a panel presentation by members of the State of Maryland Legislature who will give a legislative view of assessment and accountability. The Board will receive recommendations on NAEP Foreign Language Framework and Specifications. This session will conclude with presentations and

discussion on NAEP participation issues.

On May 13, there will be a closed meeting of the Nominations Committee from 8:00–9:00 a.m. The Committee will discuss nominees qualifications for Board membership. These discussions will relate solely to the internal personnel rules and practices of an agency and would disclose information of a personal nature where disclosure would constitute a clearly unwarranted invasion of personal privacy if conducted in open session. Such matters are protected by exemption (2) and (6) of Section 552b(c) of Title 5 U.S.C.

From 9:00 a.m., until 11:30 a.m., the full Board will meet in open session. The Board will hear the results of a study on America's kindergartners, consider issues related to NAEP incentives and rewards, and receive reports from its various standing committees. Beginning at 11:30 a.m. through adjournment, approximately 12:00 noon, the Board will meet in closed session, to receive and consider the Nominations Committee recommendations for membership. The review and subsequent discussion of this information relate solely to the internal personnel rules and practices of an agency and will disclose information of a personal nature where disclosure would constitute a clearly unwarranted invasion of personal privacy if conducted in open session. Such matters are protected by exemptions (2) and (6) of Section 552b(c) of Title 5 U.S.C.

Summaries of the activities of the closed sessions and related matters, which are informative to the public and consistent with the policy of section 5 U.S.C. 552b(c), will be available to the public within 14 days of the meeting. Records are kept of all Board proceedings and are available for public inspection at the U.S. Department of Education, National Assessment Governing Board, Suite #825, 800 North Capitol Street, NW, Washington, DC, from 8:30 a.m. to 5:00 p.m.

Dated: April 20, 2000.

Roy Truby,

Executive Director, National Assessment Governing Board.

[FR Doc. 00–10252 Filed 4–24–00; 8:45 am]

BILLING CODE 4000–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. RP00–243–000, CP97–177–000, and CP97–177–001]

Alliance Pipeline L.P.; Notice of Petition

April 19, 2000.

Take notice that on April 5, 2000, Alliance Pipeline L.P. (Alliance) filed a Petition for Partial Waiver of Part 284, Subpart J Regulations, pursuant to rule 207(a)(5) of the Federal Energy Regulatory Commission (Commission) Rules of Practice and Procedure, 18 CFR 385.207(a)(5). Alliance requests a partial, limited term waiver of: (1) 18 CFR 284.287 to permit Alliance to make sales of test gas during commissioning and testing of its pipeline without having tariff provisions governing such sales on file and approved by the Commission and (2) 18 CFR 284.283 regarding the delivery point at which Subpart J sales may be made, to the extent necessary. If the Commission declines to grant the requested waiver requests, Alliance requests, in the alternative, that the Commission issue a limited term certificate authorizing sales of test gas as proposed in the application.

Alliance states that disposition of test gas is necessary to permit the safe, timely and efficient commissioning of its new pipeline system. According to Alliance, sales of test gas as proposed in its petition will not adversely affect the firm shippers for whom Alliance will be providing transportation on the in-service date of the pipeline. In accordance with governing accounting regulations, Alliance proposes to credit net revenues from sales of test gas to the capital cost of the associated facilities being tested and commissioned for the economic benefit of the Alliance shippers. Finally, Alliance states that the requested waivers are applicable only during the limited period of the Alliance commissioning process, and that any Subpart J sales made following Alliance's in-service date will be made in accordance with the Subpart J regulations and the Commission-approved tariff in effect for Alliance at that time.

Any person desiring to be heard or to protest said filing should file a protest or motion to intervene with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426 in accordance with sections 385.211 and 385.214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214) on or before May 10, 2000. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

David P. Boergers,

Secretary.

[FR Doc. 00–10250 Filed 4–24–00; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 2114–083]

Public Utility District No. 2 of Grant County, Washington; Notice of Petition for Declaratory Order

April 19, 2000.

On April 11, 2000, a petition for declaratory order was filed by PacifiCorp; Portland General Electric Company; Puget Sound Energy, Inc.; Eugene Water and Electric Board; City of McMinnville, Oregon; City of Forest Grove, Oregon; Kootenai Electric Cooperative, Inc.; Clearwater Power Company; Idaho County Light & Power Cooperative Association, Inc.; and Northern Lights, Inc. The petition requests the Commission to issue a declaratory order finding that Public Law No. 544, 83d Congress, 68 Stat. 573 (1954), does not limit the identity of potential applicants for a new license for the Priest Rapids Hydroelectric Project No. 2114. The original license for the project was issued to the Public Utility District No. 2 of Grant County, Washington, effective November 1, 1955, and expires on October 31, 2005.[1] The petitioner assert that issuance of a declaratory order is necessary to resolve uncertainty regarding whether an entity other than Public Utility District No. 2 of Grant County or an agency of the State of Washington may obtain a new license to operate the project after the original license expires.

Anyone may submit comments, a protest, or a motion to intervene, in accordance with the requirements of the Commission's Rules of Practice and Procedure, 18 CFR 385.210, 385.211 and 385.214. In determining the appropriate action to take, the Commission will consider all protests and other comments, but only those who file a

[1] 14 FPC 1067 (1955).

motion to intervene may become a party to the proceeding. Comments, protests, or motions to intervene must be filed by May 25, 2000; must bear in all capital letters the title ''COMMENTS,'' ''PROTEST,'' or ''MOTION TO INTERVENE,'' as applicable, and Project No. 2114–083. Send the filings (original and 8 copies) to: The Secretary, Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426. A copy of any filing must also be served on each representative of the petitioner named in its petition.

David P. Boergers,

Secretary.

[FR Doc. 00–10225 Filed 4–24–00; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EC00–75–000, et al.]

Nisource Inc., et al.; Electric Rate and Corporate Regulation Filings

April 18, 2000.

Take notice that the following filings have been made with the Commission:

1. Nisource Inc. and Columbia Energy Group

[Docket No. EC00–75–000]

Take notice that on April 10, 2000, NiSource Inc. and Columbia Energy Group, on behalf of their public utility subsidiaries (collectively, the Applicants) filed a joint application under Section 203 of the Federal Power Act and Part 33 of the Commission's regulations to request authorization and approval for the proposed merger between NiSource Inc. and Columbia Energy Group.

The Applicants state that copies of the filing have been served upon the state utility commissions of Indiana, Kentucky, Maine, Maryland, Massachusetts, New Hampshire, Ohio, Pennsylvania and Virginia and wholesale electric customers of NiSource Inc. and Columbia Energy Group.

Comment date: June 9, 2000, in accordance with Standard Paragraph E at the end of this notice.

2. Indeck Capital, Inc. and Black Hills Corporation

[Docket No. EC00–76–000]

Take notice that on April 10, 2000, Indeck Capital, Inc. (Indeck) and Black Hills Corporation (Black Hills), tendered for filing a joint application under Section 203 of the Federal Power Act for authorization to merge Indeck into Black Hills Energy Capital, Inc., a subsidiary of Black Hills Corporation. Black Hills is a South Dakota corporation which conducts its utility business as Black Hills Power and Light Company. Indeck owns, operates and invests in exempt wholesale generators and qualifying facilities. Upon consummation of the merger, Indeck will be dissolved and Black Hills Energy Capital, Inc. will take possession of Indeck's facilities, including certain assets subject to the jurisdiction of the Commission.

In addition, on April 13, 2000, Indeck and Black Hills filed Supplement No. 1 to Exhibit G of the above-referenced Joint Application.

Comment date: June 9, 2000, in accordance with Standard Paragraph E at the end of this notice.

3. Indeck Colorado, LLC

[Docket No. EG00–118–000]

Take notice that on April 14, 2000, Indeck Colorado, LLC, filed an amendment to its application for determination of exempt wholesale generator status. Indeck Colorado requested that the Commission establish a shortened notice period for its filing.

Comment date: May 9, 2000, in accordance with Standard Paragraph E at the end of this notice. The Commission will limit its consideration of comments to those that concern the adequacy or accuracy of the application.

4. TransAlta Centralia Generation LLC

[Docket No. EG00–131–000]

Take notice that on April 12, 2000 TransAlta Centralia Generation LLC tendered for filing with the Federal Energy Regulatory Commission (FERC), an Application for Commission Determination of Exempt Wholesale Generator Status pursuant to Part 365 of the Commission's Regulations.

Comment date: May 9, 2000, in accordance with Standard Paragraph E at the end of this notice. The Commission will limit its consideration of comments to those that concern the adequacy or accuracy of the application.

5. American Electric Power Service Corporation

[Docket No. ER93–540–009]

Take notice that on April 12, 2000, American Electric Power Service Corporation (AEP), tendered for filing Notice of Conditional Withdrawal of Petitions for Rehearing and Compliance Rates.

Comment date: May 3, 2000, in accordance with Standard Paragraph E at the end of this notice.

6. Columbia Energy Power Marketing Corporation

[Docket No. ER97–3667–010]

Take notice that on April 13, 2000, Columbia Energy Power Marketing Corporation tendered for filing Notice of Change in Status and a code of conduct related to the proposed merger of Columbia Energy Group and NiSource Inc.

Comment date: May 4, 2000, in accordance with Standard Paragraph E at the end of this notice.

7. Conectiv Energy Supply Inc., Atlantic City Electric Company and Delmarva Power & Light Company

[Docket No. ER00–2201–000]

Take notice that Conectiv, on behalf of its affiliates Conectiv Energy Supply, Inc. (CESI), Atlantic City Electric Company (Atlantic) and Delmarva Power & Light Company (Delmarva), on April 13, 2000, tendered for filing (i) an amendment to CESI's service agreement for market-based sales to Delmarva, and (ii) service agreements for market-based sales by Delmarva and Atlantic to CESI.

Conectiv requests waiver of the Commission's notice requirements to allow the proposed service agreements and amendment to the service agreement to become effective on June 1, 2000.

Copies of the filing were served upon Delmarva's wholesale requirements customers, and the Maryland People's Counsel, Maryland Public Service Commission, Delaware Public Service Commission, New Jersey Board of Public Utilities and the Virginia State Corporation Commission.

Comment date: May 4, 2000, in accordance with Standard Paragraph E at the end of this notice.

8. Niagara Mohawk Power Corporation

[Docket No. ER00–2200–000]

Take notice that on April 13, 2000, Niagara Mohawk Power Corporation (NMPC), tendered for filing with the Federal Energy Regulatory Commission an executed form Service Agreement between NMPC and the city of Buffalo (Purchaser). The Service Agreement specifies that the Purchaser has signed and agreed to the terms and conditions of NMPC's Power Sales Tariff designated as NMPC's FERC Electric Tariff, Original Volume No. 2. This Tariff, approved by FERC on April 15, 1994, and having an effective date of March 13, 1993, allows NMPC and the Purchaser to enter into separately scheduled transactions under which NMPC will sell to the Purchaser capacity and/or energy as the parties may mutually agree.

In its filing letter, NMPC also included a Certificate of Concurrence from the Purchaser.

NMPC is: (a) Requesting an effective date of November 1, 1999 for the agreement, and (b) requesting waiver of the Commission's notice requirements for good cause shown.

NMPC has served copies of the filing upon the New York State Public Service Commission and the companies included in a Service List enclosed with the filing.

Comment date: May 4, 2000, in accordance with Standard Paragraph E at the end of this notice.

9. Duke Energy Moss Landing LLC and Duke Energy Oakland LLC

[Docket Nos. ER98–2668–009, ER98–2669–008, ER99–1127–007, ER99–1128–007, ER98–4296–006 and ER98–4300–006]

Take notice that on April 14, 2000, Duke Moss Landing, LLC and Duke South Bay, LLC tendered for filing a compliance report regarding refunds as required by the Commission's Order issued January 28, 2000 approving the Final Offer of Settlement filed in the above-captioned proceedings on November 16, 1999.

Comment date: May 4, 2000, in accordance with Standard Paragraph E at the end of this notice.

10. Carolina Power & Light Company

[Docket No. ER00–2179–000]

Take notice that on April 12, 2000, Carolina Power & Light Company (CP&L), tendered for filing a Service Agreement for Non-Firm Point-to-Point Transmission Service with Amerada Hess Corporation. Service to this Eligible Customer will be in accordance with the terms and conditions of Carolina Power & Light Company's Open Access Transmission Tariff.

CP&L is requesting an effective date of March 31, 2000, for this Agreement.

Copies of the filing were served upon the North Carolina Utilities Commission and the South Carolina Public Service Commission.

Comment date: May 3, 2000, in accordance with Standard Paragraph E at the end of this notice.

11. Ameren Services Company

[Docket No. ER00–2180–000]

Take notice that on April 12, 2000, Ameren Services Company (Ameren), tendered for filing an unexecuted Illinois Retail Network Integration Transmission Service Agreement and an unexecuted Illinois Retail Network Operating Agreement, between Ameren and Edgar Electric Cooperative Association d/b/a EnerStar (Edgar Electric). Ameren asserts that the purpose of the agreements is to permit Ameren to provide service over its transmission and distribution facilities to unbundled Illinois retail customers of Edgar Electric under the Ameren Open Access Tariff.

Ameren seeks on effective date of March 13, 2000 and, accordingly, seeks waiver of the Commission's notice requirements.

Comment date: May 3, 2000, in accordance with Standard Paragraph E at the end of this notice.

12. Wisconsin Public Service Corporation

[Docket No. ER00–2182–000]

Take notice that on April 12, 2000, Wisconsin Public Service Corporation, tendered for filing an West Marinette M34 Unit Interconnection Agreement between Madison Gas & Electric Company and Wisconsin Public Service Corporation.

Copies of the filing were served upon Madison Gas and Electric Company and the Public Service Commission of Wisconsin.

Comment date: May 3, 2000, in accordance with Standard Paragraph E at the end of this notice.

13. PPL Great Works, LLC

[Docket No. ER00–2183–000]

Take notice that on April 12, 2000, PPL Great Works, LLC tendered for filing Notice of Change in Corporate Name to notify the Federal Energy Regulatory Commission that the corporate name of PP&L Great Works, LLC has been changed to PPL Great Works, LLC, effective February 29, 2000.

Comment date: May 3, 2000, in accordance with Standard Paragraph E at the end of this notice.

14. PPL Colstrip II, LLC

[Docket No. ER00–2184–000]

Take notice that on April 12, 2000, PPL Colstrip II, LLC tendered for filing a Notice of Change in Corporate Name to notify the Federal Energy Regulatory Commission that the corporate name of PP&L Colstrip II, LLC has been changed to PPL Colstrip II, LLC, effective February 29, 2000.

Comment date: May 3, 2000, in accordance with Standard Paragraph E at the end of this notice.

15. PPL Colstrip I, LLC

[Docket No. ER00–2185–000]

Take notice that on April 12, 2000, PPL Colstrip I, LLC tendered for filing a Notice of Change in Corporate Name to notify the Federal Energy Regulatory Commission that the corporate name of PP&L Colstrip I, LLC has been changed to PPL Colstrip, LLC, effective February 29, 2000.

Comment date: May 3, 2000, in accordance with Standard Paragraph E at the end of this notice.

16. PPL Maine, LLC

[Docket No. ER00–2186–000]

Take notice that on April 12, 2000, PPL Maine, LLC tendered for filing a Notice of Change in Corporate Name to notify the Federal Energy Regulatory Commission that the corporate name of Penobscot Hydro, LLC has been changed to PPL Maine, LLC, effective February 29, 2000.

Comment date: May 3, 2000, in accordance with Standard Paragraph E at the end of this notice.

17. CMS Distributed Power, L.L.C.

[Docket No. ER00–2187–000]

Take notice that on April 12, 2000, CMS Distributed Power, L.L.C. (CMS Distributed Power), tendered for filing, pursuant to Rule 205, 18 CFR 385.205, petition for waivers and blanket approvals under various regulations of the Commission and for an order accepting its FERC Electric Rate Schedule No. 1 to be effective at the earliest possible time, but no later than 60 days from the date of its filing.

CMS Distributed Power intends to engage in electric power and energy purchases and sales. In transactions where CMS Distributed Power sells electric energy, it proposes to make such sales on rates, terms and conditions to be mutually agreed to with the purchasing party. As outlined in CMS Distributed Power's petition, CMS Distributed Power is an affiliate of CMS Energy, a public utility holding company and the parent company of Consumers Energy.

Comment date: May 3, 2000, in accordance with Standard Paragraph E at the end of this notice.

18. CET Marketing, L.P.

[Docket No. ER00–2188–000]

Take notice that on April 12, 2000, CET Marketing, L.P. (CET Marketing), tendered for filing notice that effective July 8, 1999, CET Marketing's Rate Schedule FERC No. 1, filed with the Commission on August 31, 1998, and effective September 1, 1998, is to be canceled.

Comment date: May 3, 2000, in accordance with Standard Paragraph E at the end of this notice.

19. Cogen Energy Technology, L.P.

[Docket No. ER00–2189–000]

Take notice that on April 12, 2000, Cogen Energy Technology, L.P. (CETLP),

tendered for filing notice that effective July 8, 1999, CETLP's Rate Schedule FERC No. 1, filed with the Commission on August 31, 1998, and effective September 1, 1998, is to be canceled.

Comment date: May 3, 2000, in accordance with Standard Paragraph E at the end of this notice.

20. Allegheny Energy Service Corporation, on behalf of Allegheny Energy Supply Company LLC

[Docket No. ER00–2190–000]

Take notice that on April 13, 2000, Allegheny Energy Service Corporation on behalf of Allegheny Energy Supply Company, LLC (Allegheny Energy Supply), tendered for filing Amendment No. 3 to Supplement No. 5 to complete the filing requirement for one (1) new Customer of the Market Rate Tariff under which Allegheny Energy Supply offers generation services.

Allegheny Energy requests a waiver of notice requirements to make service available as of November 18, 1999, to American Electric Power Service Corporation.

Copies of the filing have been provided to the Public Utilities Commission of Ohio, the Pennsylvania Public Utility Commission, the Maryland Public Service Commission, the Virginia State Corporation Commission, the West Virginia Public Service Commission, and all parties of record.

Comment date: May 4, 2000, in accordance with Standard Paragraph E at the end of this notice.

21. Puget Sound Energy, Inc.

[Docket No. ER00–2191–000]

Take notice that on April 13, 2000, Puget Sound Energy, Inc., tendered for filing a Netting Agreement with Avista Energy, Inc.

A copy of the filing was served upon Avista Energy Inc.

Comment date: May 4, 2000, in accordance with Standard Paragraph E at the end of this notice.

22. Puget Sound Energy, Inc.

[Docket No. ER00–2192–000]

Take notice that on April 13, 2000, Puget Sound Energy, Inc., tendered for filing a Netting Agreement with British Columbia Power Exchange Corporation (Powerex).

A copy of the filing was served upon Powerex.

Comment date: May 4, 2000, in accordance with Standard Paragraph E at the end of this notice.

23. Puget Sound Energy, Inc.

[Docket No. ER00–2193–000]

Take notice that on April 13, 2000, Puget Sound Energy, Inc., tendered for filing a Netting Agreement with Merchant Energy Group of the Americas, Inc.

A copy of the filing was served upon Merchant Energy Group of the Americas, Inc.

Comment date: May 4, 2000, in accordance with Standard Paragraph E at the end of this notice.

24. Puget Sound Energy, Inc.

[Docket No. ER00–2194–000]

Take notice that on April 13, 2000, Puget Sound Energy, Inc., tendered for filing a Netting Agreement with PG&E Energy Trading-Power, L.P.

A copy of the filing was served upon PG&E Energy Trading-Power, L.P.

Comment date: May 4, 2000, in accordance with Standard Paragraph E at the end of this notice.

25. New England Power Company

[Docket No. ER00–2195–000]

Take notice that on April 13, 2000, New England Power Company (NEP), tendered for filing Notice of Cancellation of the Unit Power Contract between NEP and UNITIL Power Corp., FERC Electric Rate Schedule No. 380.

NEP requests that cancellation be effective April 1, 2000.

Comment date: May 4, 2000, in accordance with Standard Paragraph E at the end of this notice.

26. Pacific Gas and Electric Company

[Docket No. ER00–2196–000]

Take notice that on April 13, 2000, Pacific Gas and Electric Company (PG&E), tendered for filing proposed revisions to Appendix G, ''Relay Settings for Automatic Load Shedding and Underfrequency Protective Relaying,'' of the Interconnection Agreement (IA) between PG&E and the Modesto Irrigation District (MID). The IA was initially filed under FERC Docket No. ER88–302–000 and was designated PG&E Rate Schedule FERC No. 116.

Copies of this filing have been served upon MID and the California Public Utilities Commission.

Comment date: May 4, 2000, in accordance with Standard Paragraph E at the end of this notice.

27. Florida Power & Light Company

[Docket No. ER00–2197–000]

Take notice that on April 13, 2000, Florida Power & Light Company (FPL), tendered for filing Service Agreements with Sempra Energy Trading Corp., Aquila Energy Marketing Corporation, Orlando Utilities Commission, Oglethorpe Power Corporation, Avista Energy, Inc., Noram Energy Services, Inc., for service pursuant to Tariff No. 1 for Sales of Power and Energy by Florida Power & Light and Service Agreements with Connective Energy Supply, Inc., Oglethorpe Power Corporation, Enron Power Marketing, Inc., Orlando Utilities Commission, Carolina Power & Light Company, Morgan Stanley Capital Group Inc., Duke Power Company, GPU Energy, Cargill-Alliant, LLC, and Noram Energy Services, Inc., for service pursuant to FPL's Market Based Rates Tariff.

FPL requests that the Service Agreements be made effective on March 17, 2000.

Comment date: May 4, 2000, in accordance with Standard Paragraph E at the end of this notice.

28. Commonwealth Edison Company

[Docket No. ER00–2199–000]

Take notice that on April 12, 2000, Commonwealth Edison Company (ComEd) tendered for filing a Network Operating Agreement (Agreement) between ComEd and the City of Dowagiac (Dowagiac). This agreement will govern non-rate terms of ComEd's provision of network service to serve the City of Dowagiac (Dowagiac) under the terms of ComEd's Open Access Transmission Tariff (OATT).

ComEd requests an effective date of March 1, 2000, and accordingly, seeks waiver of the Commission's notice requirements.

Copies of this filing were served on EWMD and Dowagiac.

Comment date: May 4, 2000, in accordance with Standard Paragraph E at the end of this notice.

Standard Paragraphs

E. Any person desiring to be heard or to protest such filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of these filings are on file with the Commission and are available for public inspection. This filing may also be viewed on the Internet at http://

www.ferc.fed.us/ online/rims.htm (call 202–208–2222 for assistance).

David P. Boergers,

Secretary.

[FR Doc. 00–10224 Filed 4–24–00; 8:45 am]

BILLING CODE 6717–01–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–6584–5]

Agency Information Collection Activities: Submission for OMB Review; Comment Request; Environmental Radiation Ambient Monitoring System (ERAMS)

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), this document announces that the following Information Collection Request (ICR) has been forwarded to the Office of Management and Budget (OMB) for review and approval: Environmental Radiation Ambient Monitoring System (ERAMS); OMB Control Number 2060–0015; EPA ICR Number 0877.07; expiration date, June 30, 2000. The ICR describes the nature of the information collection and its expected burden and cost; where appropriate, it includes the actual data collection instrument.

DATES: Comments must be submitted on or before May 25, 2000.

FOR FURTHER INFORMATION CONTACT: For a copy of the ICR contact Sandy Farmer at EPA by phone at (202) 260–2740, by E-Mail at Farmer.Sandy@epamail.epa.gov or download off the Internet at *http://www.epa.gov/icr* and refer to EPA ICR No. 0877.07. For technical questions about the ICR contact Charles M. Petko, (334) 270–3411.

SUPPLEMENTARY INFORMATION: *Title:* Environmental Radiation Ambient Monitoring System; OMB Control Number 2060–0015; EPA ICR Number 0877.07; expiration date, June 30, 2000. This is a request for extension of a currently approved collection.

Abstract: The Environmental Radiation Ambient Monitoring System (ERAMS) consists of a national network of sample collection stations for air, milk, precipitation, and drinking water. On prescribed schedules, all collected samples are shipped to the National Air and Radiation Environmental Laboratory (NAREL) in Montgomery, Alabama, which is an EPA facility operating under EPA's Office of Radiation and Indoor Air. NAREL analyzes all samples for levels of radiation, and the resultant data are then made available online at the EPA website and in printed format. The data are used to fulfill the Agency's commitment to public information, but they are also used by scientists and radiation professionals in a number of ways, including comparison with data developed by other agencies and commercial groups, such as the nuclear power industry. In the event of national radiation emergency, especially when EPA is the lead federal agency, ERAMS data collections and analyses are accelerated as necessary and the resultant data are used to support decisions for protecting the public health and the environment. Frequently, sample collectors are employed by state health departments or environmental agencies.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations are listed in 40 CFR part 9 and 48 CFR Chapter 15. The **Federal Register** document required under 5 CFR 1320.8(d), soliciting comments on this collection of information was published on October 28, 1999; 1 set of comments were received.

Burden Statement: The annual public reporting and recordkeeping burden for this collection of information is estimated to average 0.37 hours per response. Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

Respondents/Affected: Typically State & sometimes Local Government Sample Collectors.

Estimated Number of Respondents: 249.

Frequency of Response: from twice weekly to four times annually.

Estimated Total Annual Hour Burden: 8,363 hours.

Estimated Total Annualized Capital and Operating & Maintenance Cost Burden: $0.

Send comments on the Agency's need for this information, the accuracy of the provided burden estimates, and any suggested methods for minimizing respondent burden, including through the use of automated collection techniques to the following addresses. Please refer to EPA ICR No. 0877.07 and OMB Control No. 2060–0015 in any correspondence.

Ms. Sandy Farmer, U.S. Environmental Protection Agency, Office of Environmental Information, Collection Strategies Division (2822), 1200 Pennsylvania Ave, NW, Washington, DC 20460; and

Office of Information and Regulatory Affairs, Office of Management and Budget, Attention: Desk Officer for EPA, 725 17th Street, NW, Washington, DC 20503.

Dated: April 18, 2000.

Oscar Morales,

Director, Collection Strategies Division.

[FR Doc. 00–10282 Filed 4–24–00; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–6584–6]

Agency Information Collection Activities: Submission for OMB Review; Comment Request, New Source Performance Standards (NSPS) for Electric Arc Furnaces and Argon-Oxygen Decarburization Vessels

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), this document announces that the following Information Collection Request (ICR) has been forwarded to the Office of Management and Budget (OMB) for review and approval: NSPS for Steel Plants: Electric Arc Furnaces and Argon Oxygen Decarburization Vessels OMB No. 2060–0038 and EPA ICR No. 1060.10; expiration date is May 31, 2000. The ICR describes the nature of the information collection and its expected burden and cost; where appropriate, it includes the actual data collection instrument.

DATES: Comments must be submitted on or before May 25, 2000.

FOR FURTHER INFORMATION CONTACT: For a copy of the ICR contact Sandy Farmer at EPA by phone at (202) 260–2740, by E-Mail at Farmer.Sandy@epamail.epa.gov or download off the Internet at *http://www.epa.gov/icr* and refer to EPA ICR No. 1060.10. For technical questions about the ICR, please contact: Maria T. Malave, 202–564–7027.

Title: New Source Performance Standards (NSPS) for Electric Arc Furnaces and Argon-Oxygen Decarburization Vessels; OMB No. 2060–0038; Agency No. 1060.10; expiration date is May 31, 2000. This is a request for a revision of a currently approved collection.

Abstract: Subpart AAa applies to electric arc furnaces, AOD vessels, and dust handling systems at steel plants that produce carbon, alloy, or specialty steels: and commenced construction, modification, or reconstruction after August 17, 1983. This information is being collected to assure compliance with 40 CFR part 60, subparts AA and AAa.

Subparts AA and AAa require: (1) Monitoring and recordkeeping of operations data and opacity levels; (2) semiannual reports of excess emissions and unacceptable; and (3) notifications of procedures to be followed and CEMs performance during performance tests. Owners or operators are also required to maintain records of the occurrence and duration of any startup, shutdown, or malfunction in the operation of an affected facility, or any period during which the monitoring system is inoperative.

All reports are sent to the delegated State or local authority. Notifications are used to inform the Agency or delegated authority when a source becomes subject to the standard. The reviewing authority may then inspect the source to check if the pollution control devices are properly installed and operated.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations are listed in 40 CFR part 9 and 48 CFR Chapter 15. The **Federal Register** document required under 5 CFR 1320.8(d), soliciting comments on this collection of information was published on January 21, 2000; no comments were received.

Burden Statement: The annual public reporting and recordkeeping burden for this collection of information is estimated to average 266 hours per response. Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and disclose the information.

Respondents/Affected Entities: Steel Plants.

Estimated Number of Respondents: 90.

Frequency of Response: semiannual.

Estimated Total Annual Hour Burden: 48,413 hours.

Estimated Total Annualized Capital and O&M Cost Burden: $94,350.

Send comments on the Agency's need for this information, the accuracy of the provided burden estimates, and any suggested methods for minimizing respondent burden, including through the use of automated collection techniques to the following addresses. Please refer to OMB No. 2060–0038 and EPA ICR No. 1060.10 in any correspondence.

Ms. Sandy Farmer, U.S. Environmental Protection Agency, Office of Environmental Information, Collection Strategies Division (2822), 1200 Pennsylvania Ave., NW, Washington, DC 20460; and

Office of Information and Regulatory Affairs, Office of Management and Budget, Attention: Desk Officer for EPA, 725 17th Street, NW, Washington, DC 20503.

Dated: April 17, 2000.

Oscar Morales,

Director, Collection Strategies Division.

[FR Doc. 00–10283 Filed 4–24–00; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[Docket No. FRL–6584–2]

Final NPDES General Permits for Non-Contact Cooling Water Discharges in the States of Maine, Massachusetts, and New Hampshire

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of Final NPDES General Permits—MEG250000, MAG250000, and NHG250000.

SUMMARY: The Director of the Office of Ecosystem Protection, EPA-New England, is issuing Notice of Final National Pollutant Discharge Elimination System (NPDES) general permits for non-contact cooling water discharges to certain waters of the States of Maine, Massachusetts, and New Hampshire for the purpose of reissuing the current permit which expired on May 31, 1999. These general NPDES permits establish notice of intent (NOI) requirements, effluent limitations, standards, prohibitions and management practices for the non-contact cooling water discharges. Owners and/or operators of facilities discharging non-contact cooling water including those currently authorized to discharge under the expired general permit will be required to submit to EPA-New England, a notice of intent to be covered by the appropriate general permit and will receive a written notification from EPA of permit coverage and authorization to discharge under one of the general permits. The eligibility requirements are discussed in detail under part I. D.3.b and the reader is strongly urged to go to that section before reading further. This general permit does not cover new sources as defined under 40 CFR 122.2.

DATES: The general permit shall be effective on the date specified in the final general permit published in the **Federal Register** and will expire April 25, 2005.

ADDRESSES: Notices of intent to be authorized to discharge under these permits should be sent to: Environmental Protection Agency, 1 Congress Street, Suite 1100 (CMU), Boston, Massachusetts 02114–2023.

The submittal of other information required under these permits or individual permit applications should also be sent to the above address.

FOR FURTHER INFORMATION CONTACT: Additional information concerning the final permit may be obtained between the hours of 9:00 a.m. and 5:00 p.m. Monday through Friday excluding holidays from: Suprokash Sarker, Office of Ecosystem Protection, Environmental Protection Agency, 1 Congress Street, Suite 1100 (CMA), Boston, MA 02114–2023, telephone: 617–918–1693.

SUPPLEMENTARY INFORMATION:

Table of Contents

Changes From the Previous Permit:

• States of MA and NH—pH control and non-toxic chemical additives may be allowed.

• States of MA and NH—change in monitoring requirements for flow, temperature and pH.

• State of MA—addition of monitoring requirement for total residual chlorine if potable water is used in the non-contact cooling water.

• State of NH—limits of pH flexibility is added.

• All States—commingling of non-contact cooling water effluent is allowed so long as the effluent can be monitored before it mixes with other streams of wastewater.

• Notification and eligibility to apply are transferred from Fact Sheet and Supplemental Information to part I, Permit section I.D.

Fact Sheet and Supplemental Information

I. Introduction

The Director of the Office of Ecosystem Protection, EPA-New England, is issuing final general permits for non-contact cooling water discharges to certain waters of the States of Maine, Massachusetts, and New Hampshire. This document contains part I for the final general NPDES permits and part II, Standard Conditions.

II. Coverage of General Permits

Section 301(a) of the Clean Water Act (the Act) provides that the discharge of pollutants is unlawful except in accordance with a National Pollutant Discharge Elimination System (NPDES) permit unless such a discharge is otherwise authorized by the Act. Although such permits to date have generally been issued to individual discharges, EPA's regulations authorize the issuance of ''general permits'' to categories of discharges (see 40 CFR 122.28). EPA may issue a single, general permit to a category of point sources located within the same geographic area whose discharges warrant similar pollution control measures.

A. The Director of an NPDES permit program is authorized to issue a general permit if there are a number of point sources operating in a geographic area that:

1. Involve the same or substantially similar types of operations;

2. Discharge the same types of wastes;

3. Require the same effluent limitations or operating conditions;

4. Require the same or similar monitoring requirements; and

5. In the opinion of the Director, are more appropriately controlled under a general permit than under individual permits.

B. The similarity of the discharges prompted EPA to issue the April 28, 1994 general permit. When reissued, this permit will enable facilities currently covered under the expired general permit to maintain compliance with the Act and will extend environmental and regulatory controls to new dischargers and avoid a backlog of individual permit applications. Violations of a condition of a general permit constitute a violation of the Clean Water Act and subjects the discharger to the penalties in section 309 of the Act.

III. Exclusions

This general permit is not available to facilities which have cooling water intake structures that do not reflect the best technology available for minimizing adverse environmental impact, as required by section 316(b) of the Clean Water Act. This general permit is also not available to those facilities seeking alternative thermal limitations pursuant to section 316(a) of the Clean Water Act.

EPA has also determined that this general permit will not be available to ''New Source'' dischargers as defined in 40 CFR 122.2 due to the site specific nature of the environmental review required by the National Environmental Policy Act of 1969 (NEPA), 33 U.S.C. 4321 *et seq.* for those facilities. ''New Sources'' must comply with New Source Performance Standards (NSPS) and are subject to the NEPA process in 40 CFR 6.600. Consequently EPA has determined that it would be more appropriate to address ''New Sources'' through the individual permit process.

Any owner or operator authorized by a general permit may request to be excluded from coverage of a general permit by applying for an individual permit. This request may be made by submitting a NPDES permit application together with reasons supporting the request. The Director may also require any person authorized by a general permit to apply for and obtain an individual permit. Any interested person may petition the Director to take this action. However, individual permits will not be issued for sources discharging non-contact cooling water covered by these general permits unless it can be clearly demonstrated that inclusion under the general permit is inappropriate. The Director may consider the issuance of individual permits when:

A. The discharger is not in compliance with the terms and conditions of the general permit;

B. A change has occurred in the availability of demonstrated technology or practices for the control or abatement of pollutants applicable to the point source;

C. Effluent limitations guidelines are subsequently promulgated for the point sources covered by the general NPDES permit;

D. A Water Quality Management plan or Total Maximum Daily Load (TMDL) containing requirements applicable to such point sources is approved;

E. Circumstances have changed since the time of the request to be covered so that the discharger is no longer appropriately controlled under the general permit, or either a temporary or permanent reduction or elimination of the authorized discharge is necessary; or

F. The discharge(s) is a significant contributor of pollution.

In accordance with 40 CFR 122.28(b)(3)(iv), the applicability of the general permit is automatically terminated on the effective date of the individual permit.

IV. Permit Basis and Other Conditions of the General NPDES Permit

A. Effluent Limitations

1. Statutory Requirements

Section 301(a) of the Clean Water Act (CWA or the Act), 33 U.S.C. 1311(a), makes it unlawful to discharge pollutants to waters of the United States without a permit. Section 402 of the Act, 33 U.S.C. 1342, authorizes EPA to issue NPDES permits allowing discharges that will meet certain

requirements, including CWA sections 301, 304, and 401 (33 U.S.C. 1331, 1314, and 1341). Those statutory provisions state that NPDES permits must include effluent limitations requiring authorized discharges to: (1) Meet standards reflecting specified levels of technology-based treatment requirements; (2) comply with State Water Quality Standards; and (3) comply with other state requirements adopted under authority retained by states under CWA section 510, 33 U.S.C. 1370.

EPA is required to consider technology and water quality requirements when developing permit limits. 40 CFR part 125, subpart A sets the criteria and standards that EPA must use to determine which technology-based requirements, requirements under section 301(b) of the Act and/or requirements established on a case-by-case basis under section 402(a)(1) of the Act, should be included in the permit.

The Clean Water Act requires that all discharges, at a minimum, must meet effluent limitations based on the technology-based treatment requirements for dischargers to control pollutants in their discharge. Section 301(b)(1)(A) of the Act requires the application of Best Practicable Control Technology Currently Available (BPT) with the statutory deadline for compliance being July 1, 1977, unless otherwise authorized by the Act. Section 301(b)(2) of the Act requires the application of Best Conventional Control Technology (BCT) for conventional pollutants, and Best Available Technology Economically Achievable (BAT) for non-conventional and toxic pollutants. The compliance deadline for BCT and BAT is as expeditiously as practicable but in no case later than three years after the date such limitations are promulgated and in no case later than March 31, 1989.

2. Technology-based Effluent Limitations

EPA has not promulgated National Effluent Guidelines for non-contact cooling water discharges. EPA believes that the limits established to meet the Water Quality Standards discussed below are sufficient to satisfy BAT/BCT described in section 304(b) of the Act.

3. Water Quality Based Effluent Limitations

Under section 301(b)(1)(C) of the Act discharges are subject to effluent limitations based on water quality standards. Receiving stream requirements are established according to numerical and narrative standards adopted under state and/or federal law for each stream use classification. Section 401 of the CWA requires that EPA obtain State certification which ensures that all water quality standards and other appropriate requirements of state law will be satisfied. Regulations governing State certification are set forth in 40 CFR 124.53 and 124.55.

The States of Maine, Massachusetts, and New Hampshire have narrative criteria in their water quality regulations (see Maine Title 38, Article 4–A, section 420 and section 464.4.A.(4); Massachusetts 314 CMR 4.05(5)(e); and New Hampshire Part Env-Ws 430.50(a) that prohibits toxic discharges in toxic amounts. The permit does not allow for the addition of materials or chemicals in amounts which would produce a toxic effect to any aquatic life.

Non-contact cooling water discharges do not contain or come in contact with raw materials, intermediate products, finished products, or process wastes. Therefore, it could be assumed that the discharges do not contain toxic or hazardous pollutants or oil and grease. Nevertheless, toxic effects may still occur as a result of toxic source water or due to dissolution of the piping in the cooling water systems. Any non-contact cooling water discharges which would violate water quality criteria established for toxic or hazardous pollutants would not qualify for this general permit and an individual permit would be required.

Water quality standards applicable to non-contact cooling water discharges covered by this general permit include pH and temperature. The limitations for pH and temperature are based upon limitations in the existing permit in accordance with the antibacksliding requirements found in 40 CFR 122.44(1). The permittees have been able to achieve consistent compliance with all these limitations. The state of New Hampshire may consider a change in pH under certain conditions. The following language reveals when pH can be changed for the state of New Hampshire:

The pH limits in the draft permit remain unchanged from the existing permit, however, language has been added to this draft permit allowing for a change in pH limit(s) under certain conditions as per State Permit Conditions (part I.C.2.a.). A change would be considered if the applicant can demonstrate to the satisfaction of NHDES–WD that the in-stream pH standard will be protected when the discharge is outside the permitted range, then the applicant or NHDES–WD may request (in writing) that the permit limits be modified by EPA to incorporate the results of the demonstration.

Anticipating the situation where NHDES–WD grants a formal approval changing the pH limit(s) to outside the 6.5 to 8.0 Standard Units (S.U.), EPA has added a provision to this draft permit (see New Hampshire part I.C.1.g.). That provision will allow EPA to modify the pH limit(s) using a certified letter approach. This change will be allowed as long as it can be demonstrated that the revised pH limit range does not alter the naturally occurring receiving water pH. Reference part I.C.2.a. **State Permit Conditions** in that permit. However, the pH limit range cannot be less restrictive than found in the applicable National Effluent Limitation Guideline for the facility or to a default range of 6.0 to 9.0 S.U. in the situation of no applicable guideline, whichever is more stringent.

If the State approves results from a pH demonstration study, this permit's pH limit range can be relaxed in accordance with 40 CFR 122.44(l)(2)(i)(B) because it will be based on new information not available at the time of this permit's issuance. This new information includes results from the pH demonstration study that justifies the application of a less stringent effluent limitation. EPA anticipates that the limit determined from the demonstration study as approved by the NHDES–WD will satisfy all effluent requirements for this discharge category and will comply with New Hampshire's Surface Water Quality Regulations amended on September 30, 1996.

B. Antidegradation Provisions

The conditions of the permit reflect the goal of the CWA and EPA to achieve and maintain water quality standards. The environmental regulations pertaining to the State Antidegradation Policies which protect the State's surface waters from degradation of water quality are found in the following provisions: Maine Title 38, Article 4–A. section 464.4.F.; Massachusetts Water Quality Standards 314 CMR 4.04 *Antidegradation Provisions*; and New Hampshire RSA 485–A:8, VI Part Env-Ws 430.31 through 430.45.

This general permit does not apply to any new or increased discharge to any outstanding national resource water or the territorial seas. It also does not apply to any new or increased discharge to other waters unless the discharge is shown to be consistent with the state's antidegradation policies. This determination shall be made in accordance with the appropriate State Antidegradation implementation procedures. EPA will not authorize these discharges under the general permit until it receives a favorable

antidegradation review and certification from the States.

C. Monitoring and Reporting Requirements

Effluent limitations and monitoring requirements which are included in the general permit describe the requirements to be imposed on the facilities to be covered.

Facilities covered by the final general permits will be required to submit to EPA, New England Region and the appropriate State authority, a Discharge Monitoring Report (DMR) containing effluent data. The frequency of reporting is determined in accordance with each State's provisions (see the individual State permits).

The monitoring requirements have been established to yield data representative of the discharge under authority of section 308(a) of the Act and 40 CFR 122.41(j), 122.44(i) and 122.48, and as certified by the State.

D. Endangered Species

The proposed limits are sufficiently stringent to assure water quality standards, both for aquatic life protection and human health protection, will be met. The effluent limitations established in these permits ensure protection of aquatic life and maintenance of the receiving water as an aquatic habitat. The Region finds that adoption of the proposed permits is unlikely to adversely affect any threatened or endangered species or its critical habitat. EPA is seeking written concurrence from the United States Fish and Wildlife Service and National Marine Fisheries Service on this determination.

E. Standard Permit Condition

40 CFR 122.41 and 122.42 must be complied with. Specific language will be provided to permittees in part II of the permit.

F. State (401) Certification

Section 401 of the CWA provides that no Federal license or permit, including NPDES permits, to conduct any activity that may result in any discharge into navigable waters shall be granted until the State in which the discharge originates certifies that the discharge will comply with the applicable provisions of sections 301, 302, 303, 306, and 307 of the CWA. The section 401 certification process is underway in all States. In addition, EPA and the Commonwealth of Massachusetts jointly issue the final permit.

G. The Coastal Zone Management Act

The Coastal Zone Management Act (CZMA), 16 U.S.C. 1451 *et seq.*, and its implementing regulations (15 CFR part 930) require that any federally licensed activity affecting the coastal zone with an approved Coastal Zone Management Program (CZMP) be determined to be consistent with the CZMP. In the case of general permits, EPA has the responsibility for making the consistency certification and submitting it to the state for concurrence. EPA has requested the MEDEP, Division of Water Resource Regulation, 17 State House, Augusta, ME 04333; the Executive Office of Environmental Affairs, MACZM, 100 Cambridge Street, Boston, MA 02202; and the Office of State Planning, New Hampshire Coastal Program, 2½ Beacon Street, Concord, NH 03301, to provide a consistency concurrence that the proposed general permit is consistent with the ME, MA and NH Coastal Zone Management Program respectively.

H. Environmental Impact Statement Requirements

The general permits do not authorize discharges from any new sources as defined under 40 CFR 122.2. Therefore, the National Environmental Policy Act, 33 U.S.C. 4321 *et seq.*, does not apply to the issuance of these general NPDES permits.

I. National Historic Preservation Act of 1966

Facilities which adversely affect properties listed or eligible for listing in the National Registry of Historic Places under the National Historic Preservation Act of 1966, 16 U.S.C. SS470 et. seq. are not authorized to discharge under this permit.

J. Essential Fish Habitat

The proposed limits are sufficiently stringent to assure state water quality standards, both for aquatic life protection and human health protection, will be met. The effluent limitations established in these permits ensure protection of aquatic life and maintenance of the receiving water as an aquatic habitat. The Region finds that adoption of the proposed permits is unlikely to adversely affect any federally managed species for which essential fish habitat has been designated. EPA is seeking written concurrence from the National Marine Fisheries Service on this determination.

V. Other Legal Requirements

A. Executive Order 12866

EPA has determined that this general permit is not a ''significant regulatory action'' under the terms of Executive Order 12866 and is therefore not subject to OMB review.

B. Paperwork Reduction Act

The information collection requirements of this permit were previously approved by the Office of Management and Budget under the provisions of the Paperwork Reduction Act. 44 U.S.C. 3501 *et seq.*, and assigned OMB control number 2040–0086 (NPDES permit application) and 2040–0004 (Discharge Monitoring Reports).

C. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA), 5 U.S.C. 601 *et seq.*, requires that EPA prepare a regulatory flexibility analysis for rules subject to the requirements of 5 U.S.C. 553(b) that have a significant impact on a substantial number of small entities. The permit issued today, however, is not a ''rule'' subject to the requirements of 5 U.S.C. 553(b) and is therefore not subject to the Regulatory Flexibility Act.

D. Unfunded Mandates Reform Act

Section 201 of the Unfunded Mandates Reform Act (UMRA), Public Law 104–4, generally requires Federal agencies to assess the effects of their ''regulatory actions'' (defined to be the same as ''rules'' subject to the RFA) on tribal, state and local governments and the private sector. The permit issued today, however, is not a ''rule'' subject to the RFA and is therefore not subject to the requirements of UMRA.

Dated: April 14, 2000.

Mindy S. Lubber,

Regional Administrator, New England.

Part I—Final General Permits Under the National Pollutant Discharge Elimination System (NPDES)

Note: The following three final general permits have been combined for purposes of this **Federal Register**. Part I A, part I B and part I C contain general permits for the states of ME, MA (including both Commonwealth and Indian Country lands), and NH respectively. Part I.D. is common to all three permits.

A. Maine General Permit, Permit No. MEG250000

In compliance with the provisions of the Federal Clean Water Act, as amended, (33 U.S.C. 1251 *et seq.*; the ''CWA''), operators of industrial facilities discharging non-contact cooling water located in Maine are

authorized to discharge to all waters of the State unless otherwise restricted by Title 38, Article 4–A, Water Classification Program, in accordance with effluent limitations, monitoring requirements and other conditions set forth herein. No discharge into lakes is authorized by this permit. The permit allows non-contact cooling water to be commingled with other discharges as long as the non-contact cooling water can be monitored separately for compliance. In Maine the General NPDES Permit is not available to dischargers in Indian Country. EPA will in the near future be making a decision regarding whether State law applies in Indian Country in Maine for the purposes of water quality regulation in response to the State's application to implement the NPDES Permit program in Indian Country. Until then we will not know from whom to accept section 401 of the Clean Water Act certification and so are not making the permit available in Indian Country.

This permit shall become effective when issued.

This permit and the authorization to discharge expire at midnight, five years from the effective date of the **Federal Register** publication and supersedes the permit issued on April 28, 1994.

Signed this 14th day of April, 2000.

Edward K. McSweeney,

Acting Director, Office of Ecosystem Protection, Environmental Protection Agency, Boston, MA 02114.

Effluent Limitations and Monitoring Requirements

1. During the period beginning on the effective date and lasting through expiration, the permittee is authorized to discharge non-contact cooling water.

a. Each outfall discharging non-contact cooling water shall be limited and monitored as specified below. Monitoring for each outfall shall be reported.

Effluent characteristic	Discharge limitations Other units (specify)		Monitoring requirements	
	Avg. monthly	Max. daily	Measurement frequency	Sample type
Flow (See A.1.h. and Fig. I.)	Report	Report	Monthly	Total Daily.
Temperature (See A.1.h. and Fig. I)	Report	Report	Monthly	Grab.
Total Residual Chlorine (See A.1.i.)		Report	Quarterly	Grab.
pH (See A.1.d.)			4/Month	Grab.
LC_{50} & C– NOEC (See A.1.j.)				24-hr. Comp.

b. The discharge shall not cause a violation of the water quality standards.

c. Non-contact cooling water may be discharged only into Class B, C, SB, and SC waters that have a drainage area larger than ten (10) square miles in accordance with Maine State Law. See part I.A.1.h. for details for determining if the specific discharge(s) have acceptable dilution and can be covered by the General Permit Program.

d. The pH of the effluent shall not be less than 6.0 standard units nor greater than 8.5 standard units any time unless these values are exceeded due to natural causes or as a result of an approved treatment process. pH shall be monitored monthly with 4 grabs, reporting maximum and minimum values.

e. There shall be no discharge of floating solids or visible foam in other than trace amounts.

f. Samples taken in compliance with the monitoring requirements specified above shall be taken at a location that provides a representative analysis of the effluent just prior to discharge to the receiving water or if the effluent is commingled with another permitted discharge, prior to such commingling.

g. *Water Treatment Additives.* Non-toxic water treatment additives are chemicals used in cooling water systems primarily to control corrosion or prevent deposition of scale forming materials which do not exhibit any residual toxic effect on the receiving waters. No treatment additives may be used until specifically reviewed and authorized by MEDEP. Non-toxic water treatment additives are allowed in non-contact cooling water systems. The State of Maine will review each identified chemical to determine its acceptability. Additives used to control biological growth in such cooling systems are prohibited due to their inherent toxicity to aquatic life.

The following water treatment additive biological and chemical data must be supplied in the letter of intent to be covered by this general permit:

(1) Name and manufactureR of each additive used,

(2) Maximum and average daily quantity of each additive used on a monthly basis, and

(3) The vendor's reported aquatic toxicity of additive (NOAEL and/or LC_{50} in % for typically acceptable aquatic test organisms).

All substitutions to the accepted water treatment chemicals must be approved by the State prior to their usage.

h. *Discharge Temperature and Volume.* The temperature and total volume of the discharge from each facility shall not exceed 120 °F and 3.0 million gallons per day (MGD). The acceptability of the discharge from each facility must be determined using the graph on Figure I. The intersection of the maximum effluent temperature and the dilution ratio shall be in the ''acceptable'' range shown on Figure I, titled ''Effluent Temperature/Dilution Graph'' for coverage by the General Permit. If the intersection falls within the ''non-acceptable'' area, the facility must be covered by an individual NPDES Permit, not the General Permit.

The effluent temperature is the maximum daily temperature. The dilution factor is the sum of the 7Q10 low stream flow at the facility site and the daily maximum effluent flow divided by the daily maximum effluent flow. For facilities with multiple outfalls, the daily maximum effluent flow shall be the sum of the flow from all outfalls.

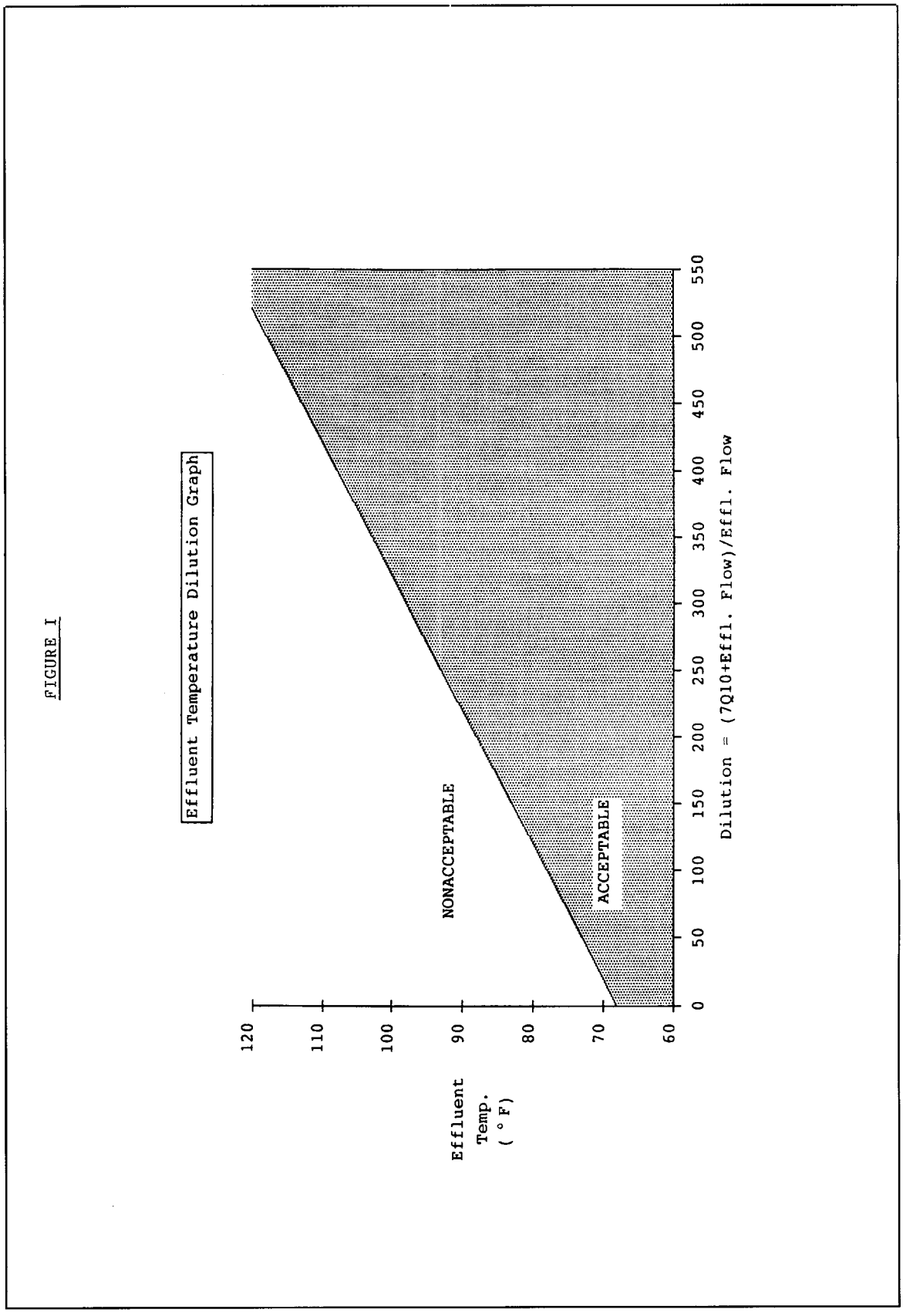
i. *Total Residual Chlorine.* Potable water supply sources used for cooling water supply shall not contain Total Residual Chlorine (TRC) at concentration levels that induce a toxic impact upon aquatic life within the receiving waters. The instream waste concentration of TRC based on the ratio of the effluent flow stream flow to the 7Q10 low flow of the stream shall be less than the appropriate water quality criteria (acute = 19 μg/l, chronic = 11 ug/l for fresh water and acute = 13 μg/l, chronic = 7.5 μg/l for marine water) for the receiving waterway.

j. In the case of suspected toxicity, chronic (and modified acute) toxicity test(s) shall be performed on the non-contact cooling water discharge by the permittee upon request by EPA and/or MEDEP. Testing shall be performed in accordance with EPA toxicity protocol to be provided at the time of the request. The test shall be performed on a 24 hour composite sample to be taken during normal facility operation. The result of

the test (LC_{50} & C–NOEC) shall be forwarded to EPA and the State within 30 days.

BILLING CODE 6560–50–P

FIGURE I



BILLING CODE 6560–50–C

B. Massachusetts General Permit, Permit No. MAG250000

In compliance with the provisions of the Federal Clean Water Act, as amended, (33 U.S.C. 1251 *et seq.*; the ''CWA''), and the Massachusetts Clean Waters Act, as amended, (M.G.L. Chap. 21, sections 26–53), operators of facilities located in Massachusetts, which discharge non-contact cooling water to the classes of waters as designated in the Massachusetts Water Quality Standards, 314 CMR 4.00 et seq. are authorized to discharge to all waters, unless otherwise restricted, in accordance with effluent limitations, monitoring requirements and other conditions set forth herein.

The permit allows non-contact cooling water to be commingled with other discharges as long as the noncontact cooling water can be monitored separately for compliance.

This permit shall become effective when issued.

This permit and the authorization to discharge expire at midnight, five years from the effective date of the **Federal Register** publication and supersedes the permit issued on April 28, 1994.

Signed this 14th day of April, 2000.

Edward K. McSweeney,

Acting Director, Office of Ecosystem Protection, Environmental Protection Agency, Boston, MA 02114.

Glenn Hass,

Director, Division of Watershed Management, Department of Environmental Protection, Commonwealth of Massachusetts, Boston, MA.

Effluent Limitations and Monitoring Requirements

1. During the period beginning on the effective date and lasting through expiration, the permittee is authorized to discharge non-contact cooling water.

a. Each outfall discharging non-contact cooling water shall be limited and monitored as specified below. Monitoring for each outfall shall be reported.

Effluent characteristic	Discharges limitations Other units (specify)		Monitoring requirements	
	Avg. monthly	Max. daily	Measurement frequency	Sample type
Flow	.....	1.0 MGD [1]	Monthly	Total daily.
Temperature [3]				
Warm water fishery [2] (Class A and B).	Report	83°F(28.3°C)	Monthly	4 grabs, report maximum and average.
Cold water fishery [2] (Class A and B).	Report	68°F(20°)	Monthly	4 grabs, report maximum and average.
(Class SA and SB)	Report	85° F (29.4° C)	Monthly	4 grabs, report maximum and average.
pH	.....	(see Part I.B.1.i or j).	Monthly	4 grabs report maximum and minimum values.
LC_{50} C–NOEC, ...	.....	(see Part I.B.1.k) ..	.....	24-hour composite.
Total Residual Chlorine (For potable water supply only).	Report(ug/l)	Report(ug/l)	Quarterly	4 grabs, report maximum and average.

[1] The State with EPA concurrence may allow coverage under the general permit for discharges greater than 1.0 MGD when it determines that such discharge is consistent with all the terms and conditions of the permit on a case by case basis without violating surface water quality standards.

[2] The definition of a cold or warm water fishery can be found in the Massachusetts Surface Water Quality Standards, 314 CMR 4.02.

[3] Samples shall be taken immediately upstream and downstream of the discharge (allowing for resaonable mixing), once per quarter to ensure that receiving water temperature rise limits are being complied with.

b.* * * The discharge shall not cause a violation of the water quality standards.

c.* * * The rise in temperature due to a discharge to Class A waters shall not exceed 1.5°F (0.8°C); and natural seasonal and daily variations shall be maintained (314CMR4.05(3)(a)2).

d.* * * The rise in temperature due to a discharge to Class B waters shall not exceed 3°F (1.7°C) in rivers and streams designated as cold water fisheries nor 5°F (2.8°C) in rivers and streams designated as warm water fisheries (based on the minimum expected flow for the month); in lakes and ponds the rise shall not exceed 3°F (1.7°C) in the epilimnion (based on the monthly average of maximum daily temperature); and natural seasonal and daily variations shall be maintained (314 CMR 4.05(3)(b)2).

e.* * * The rise in temperature due to a discharge to Class SA waters shall not exceed 1.5°F (0.8°C); and natural seasonal and daily variations shall be maintained (314 CMR 4.05(4)(a)2).

f.* * * The rise in temperature due to a discharge to Class SB waters shall not exceed 1.5°F (0.8°C) during the summer months (July through September) nor 4°F (2.2°C) during the winter months (October through June); and natural seasonal and daily variations shall be maintained 314 CMR 4.05(4)(b)2.

g. There shall be no discharge of floating solids, visible oil sheen or foam other than in trace amounts.

h. Samples taken in compliance with the monitoring requirements specified above shall be taken at a location that provides a representative analysis of the effluent just prior to discharge to the receiving water or if the effluent is commingled with another discharge, prior to such commingling. Samples shall be spaced throughout the operating day and at times representative of temperature fluctuations in the discharge.

i. The pH of the effluent for discharges to Class A and Class B waters shall be in the range of 6.5–8.3 standard units and not more than 0.5 units outside of the background range. There shall be no change from background conditions that would impair any uses assigned to the receiving water Class.

j. The pH of the effluent for discharges to Class SA and Class SB waters shall be in the range of 6.5–8.5 standard units and not more than 0.2 units outside of the normally occurring range. There shall be no change from background conditions that would impair any uses assigned to the receiving water Class.

k. Chronic (and modified acute) toxicity test(s) shall be performed on the non-contact cooling water discharge by the permittee upon request by EPA and/or MADEP. Testing shall be performed in accordance with EPA toxicity protocol to be provided at the time of the request. The test shall be performed on a 24-hour composite sample to be taken during normal facility operation. The results of the test (C–NOEC and LC_{50}) shall be forwarded to State and EPA within 30 days after completion.

l. This permit does not allow for the addition of any chemical for any purpose to the non-contact cooling water except for non-toxic neutralization chemicals. The Commonwealth of Massachusetts will review each identified neutralization chemical to determine its acceptability. In addition, additives used to control biological growth, corrosion, and/or scale in cooling water are prohibited due to their inherent toxicity to aquatic life.

For each non-toxic neutralization chemical used the following data must be supplied with the Notice Of Intent letter to be covered by this general permit.

(1) Name and manufacturer,

(2) Maximum and average daily quantity used on a monthly basis as well as the maximum and average daily expected concentrations (mg/l) in the cooling water, and

(3) The vendor's reported aquatic toxicity (NOAEL and/or LC_{50} in % for typically acceptable aquatic organism).

All substitutions of nontoxic neutralization chemicals must be approved by the State in writing prior to their usage. All written substitution requests must contain the information required in part I.B.1.l.(1)–(3) immediately above.

m. Flow equalization must be installed for all new discharges.

2. State Permit Conditions

1. This Discharge Permit is issued jointly by the U. S. Environmental Protection Agency (EPA) and the Department of Environmental Protection under Federal and State law, respectively. As such, all the terms and conditions of this permit are hereby incorporated into and constitute a discharge permit issued by the Director of the Massachusetts Division of Watershed Management pursuant to M.G.L. Chap. 21, section 43.

2. Each Agency shall have the independent right to enforce the terms and conditions of this Permit. Any modification, suspension or revocation of this Permit shall be effective only with respect to the Agency taking such action, and shall not affect the validity or status of this Permit as issued by the other Agency, unless and until each Agency has concurred in writing with such modification, suspension or revocation. In the event any portion of this Permit is declared, invalid, illegal or otherwise issued in violation of State law such permit shall remain in full force and effect under Federal law as an NPDES Permit issued by the U.S. Environmental Protection Agency. In the event this Permit is declared invalid, illegal or otherwise issued in violation of Federal law, this Permit shall remain in full force and effect under State law as a Permit issued by the Commonwealth of Massachusetts.

C. New Hampshire General Permit, Permit No. NHG250000

In compliance with the provisions of the Federal Clean Water Act, as amended, (33 U.S.C. 1251 *et seq.*; the ''CWA''), operators of industrial facilities discharging non-contact cooling water located in New Hampshire are authorized to discharge to all waters, unless otherwise restricted by State Water Quality Standards, New Hampshire RSA 485–A:8, in accordance with effluent limitations, monitoring requirements and other conditions set forth herein. The permit allows non-contact cooling water to be commingled with other discharges as long as the non-contact cooling water can be monitored separately for compliance.

This permit shall become effective when issued.

This permit and the authorization to discharge expire at midnight, five years from the effective date of the **Federal Register** publication and supersedes the permit issued on April 28, 1994.

Signed this 14th day of April, 2000.

Edward K. McSweeney,

Acting Director, Office of Ecosystem Protection, Environmental Protection Agency, Boston, MA 02114.

Effluent Limitations and Monitoring Requirements

l. During the period beginning on the effective date and lasting through expiration, the permittee is authorized to discharge non-contact cooling water.

a. Each outfall discharging non-contact cooling water shall be limited and monitored as specified below. Monitoring for each outfall shall be reported.

Effluent characteristic	Discharge limitations other units (specify)		Monitoring requirements	
	Avg. monthly	Max. daily	Measurement Frequency	Sample Type
Flow, mgd	Report	[1] 1.0	1/Week	Estimate or Totalizer.
Temperature:				
Cold water fishery [2]	Report	68°F(20 °C)	3/Week	Grab.
Warm water fishery [2]	Report	83°F (28.3 °C)	3/Week	Grab.
pH	(see Part I.C.1.g)		1/Week	Grab.
LC_{50} & C–NOEC, %	(see Part I.C.1.f)			24-hour composite.

[1] The State with EPA concurrence may allow coverage under the general permit for discharges greater than 1.0 mgd when it determines that such discharge is consistent with all the terms and conditions of the permit on a case by case basis without violating surface water quality standards.

[2] As determined by the New Hampshire Fish and Game Department.

b. The discharge shall not cause a violation of the water quality standards of the receiving water.

c. This permit does not allow the addition of any chemical for any purpose to the water except for non-toxic pH neutralization chemicals. The State of New Hampshire will review each identified pH neutralization chemical to determine its acceptability. In addition, additives used to control biological growth, corrosion, and/or scale in cooling water are prohibited due to their inherent toxicity to aquatic life.

For each non-toxic pH neutralization chemical used the following data must be supplied with the Notice Of Intent

letter to be covered by this general permit.

(1) Name and manufacturer,

(2) Maximum and average daily quantity used on a monthly basis as well as the maximum and average daily expected concentrations (mg/l) in the cooling water, and

(3) The vendor's reported aquatic toxicity (NOAEL and/or LC_{50} in percent for typically acceptable aquatic organism(s)).

All substitutions of non-toxic pH neutralization chemicals must be approved by the State in writing prior to their usage. All written substitution requests must contain the information required in part I.C.1.c.(1)–(3) immediately above.

d. There shall be no discharge of oil, floating solids, foam, debris or other visible pollutants.

e. Samples taken in compliance with the monitoring requirements specified above shall be taken at a location that provides a representative analysis of the effluent just prior to discharge to the receiving water or, if the effluent is commingled with another permitted discharge, prior to such commingling.

f. One chronic (and modified acute) toxicity test shall be performed on the non-contact cooling water discharge by the permittee upon request by EPA and/or the NHDES. Testing shall be performed in accordance with EPA toxicity protocol to be provided at the time of the request. The test shall be perrformed on a 24-hour composite sample to be taken during normal facility operation. The results of the test (C–NOEC and LC_{50}) shall be forwarded to the State and EPA within 30 days after completion.

g. The permittee may submit a written request to the EPA requesting a change in the permitted pH limit range to be not less restrictive than any applicable federal effluent guideline for the facility or to a default range of 6.0 to 9.0 S.U. in the situation of no applicable guideline, whichever is more stringent. The permittee's written request must include the State's letter containing an original signature (no copies). The State's letter shall state that the permittee has demonstrated to the State's satisfaction that as long as discharges to the receiving water from a specific outfall are within a specific numeric pH range the naturally occurring receiving water pH will be unaltered. That letter must specify for each outfall the associated numeric pH limit range. Until written notice is received by certified mail from the EPA indicating the pH limit range has been changed, the permittee is required to meet the permitted pH limit range in the respective permit.

2. State Permit Conditions

a. The permittee shall comply with the following conditions which are included as State Certification requirements.

The pH range for class B waters shall be 6.5–8.0 S.U. or as naturally occurs in the receiving water. The 6.5–8.0 S.U. range must be achieved in the final effluent unless the permittee can demonstrate to Division that: (1) The range should be widened due to naturally occurring conditions in the receiving water or (2) the naturally occurring source water pH is unaltered by the permittees operation. The scope of any demonstration project must receive prior approval from the Division.

b. This NPDES Discharge Permit is issued by the U.S. Environmental Protection Agency under Federal and State law. Upon final issuance by the EPA, the New Hampshire Department of Environmental Services, Surface Water Quality Bureau, may adopt this Permit, including all terms and conditions, as a state permit pursuant to RSA 485–A:13.

D. Common Elements for all Permits

1. Description of Non-Contact Cooling Water Discharges

Non-contact cooling water is water used to reduce temperature which does not come into direct contact with any raw material, intermediate product, waste product (other than heat) or finished product. Non-contact cooling water discharges are similar in composition even though they are not generated by a single industrial category or point source. For further definition of noncontact cooling water see 40 CFR 401.11 (n).

2. Conditions of the General NPDES Permit

a. *Geographic Areas: Maine* (Permit No. MEG250000). All of the discharges to be authorized by the general NPDES permit for dischargers located in the State of Maine are into all waters of the State unless otherwise restricted by Title 38, Article 4–A, Water Classification Program (or as revised). In Maine the General NPDES Permit is not available to dischargers in Indian Country. EPA will in the near future be making a decision regarding whether State law applies in Indian Country in Maine for the purposes water quality regulation in response to the State's application to implement the NPDES Permit program in Indian Country. Until then we will not know from whom to accept section 401 of the Clean Water Act certification and so are not making the permit available in Indian Country.

Massachusetts (Permit No. MAG250000). All of the discharges to be authorized by the general NPDES permit for dischargers in the Commonwealth of Massachusetts are into all waters of the Commonwealth and Indian Country lands unless otherwise restricted by the Massachusetts Surface Water Quality Standards, 314 CMR 4.00 (or as revised), including 314 CMR 4.04(3) *Protection of Outstanding Resource Waters.*

New Hampshire (Permit No. NHG250000). All of the discharges to be authorized by the general NPDES permit for dischargers in the State of New Hampshire are into all waters of the State of New Hampshire unless otherwise restricted by the State Water Quality Standards, New Hampshire RSA 485–A:8 (or as revised).

b. *Notification by Permittees*: Operators of facilities whose discharge, or discharges, are non-contact cooling water and whose facilities are located in the geographic areas described in part I.D.2. above, may submit to the Regional Administrator, EPA—New England, a notice of intent to be covered by the appropriate general permit. Notifications must be submitted by permittees who are seeking coverage under this permit for the first time and by those permittees who received coverage under the expired permit. This written notification must include for each individual facility, the owner's and/or operator's legal name, address and telephone number; the facility name, address, contact name and telephone number; the number and type of facilities (SIC code) to be covered; the facility location(s); a topographic map (or other map if a topographic map is not available) indicating the facility location() and discharge point(s); latitude and longitude of outfall(s); the name(s) of the receiving waters into which discharge will occur; the source of noncontact cooling water *i.e.,* river intake, (cooling water intake structures shall reflect best technology available for minimizing adverse environmental impact), municipal water supply or private well etc.; an antidegradation review where necessary see section IV. B of the Fact Sheet); new and increased discharges of non-contact cooling water that may adversely affect a listed or proposed to be listed endangered or threatened species or its critical habitat are not authorized under this general permit (see section IV. D of the Fact Sheet); and if required, a special list of water treatment chemicals used by the facility. The notice must be signed in accordance with the signatory requirements of 40 CFR 122.22.

Facilities located in Maine, Massachusetts and New Hampshire that

intend to be covered under this general permit must also submit a formal certification with the notice of intent that no chemical additives except those used for pH adjustment are used in their non-contact cooling water systems. If non-toxic neutralization chemicals are used, each shall be listed in the Notice of Intent letter.

Each facility must certify that the discharge for which it is seeking coverage under this general permit consists solely of non-contact cooling water and any authorized water treatment chemicals. If the discharge of non-contact cooling water subsequently mixes with other wastewater (*e.g.* stormwater) prior to discharging to receiving water, the permittee must certify that the monitoring it will provide under this general permit will be only for contact cooling water. An authorization to discharge under this general permit, where the non-contact cooling water discharges to a municipal or private storm drain owned by another party, does not convey any rights or authorization to connect to that drain.

Each facility must also submit a copy of the notice of intent to each State authority as appropriate (see individual state permits for appropriate authority and address).

The facilities authorized to discharge under the final general permit will receive written notification from EPA, New England Region, with State concurrence. Failure to submit to EPA, New England Region , a notice of intent to be covered and/or failure to receive from EPA written notification of permit coverage means that the facility is not authorized to discharge under this general permit.

3. Administrative Aspects

a. *Request to be covered*: A facility is not covered by any of these general permits until it meets the following requirements. First, it must send a notice of intent to EPA and the appropriate State indicating it meets the requirements of the permit and wants to be covered. And second, it must be notified in writing by EPA that it is covered by this general permit.

b. *Eligibility to Apply*: Any facility operating under an effective (unexpired) individual NPDES permit may request that the individual permit be revoked and that coverage under the general permit be granted, as outlined in 40 CFR 122.28(b)(3)(v).If EPA revokes the individual permit, the general permit would apply to the discharge.

Facilities with expired individual permits that have been administratively continued in accordance with 40 CFR 122.6 may apply for coverage under this general permit. When coverage is granted the expired individual permit automatically will cease being in effect. Proposed new dischargers may apply for coverage under this general permit and must submit the NOI 90 days prior to the discharge.

Facilities with coverage under the current general permit issued on April 28, 1994, effective on May 31, 1994 and expired on May 31, 1999 need to apply for coverage under this general permit within 60 days from the effective date of the permit. Failure to submit a Notice of Intent within 60 days for continuation of the discharge will be considered discharging without a permit as of the expiration date of the expired permit (May 31, 1999) for enforcement purposes. A Notice of Intent is not required if the permittee submits a Notice of Termination (see part I.F.1) of discharge before the sixty days expires.

c. *Continuation of this General Permit after expiration:* If this permit is not reissued prior to the expiration date, it will be administratively continued in accordance with the Administrative Procedures Act and remain in force and in effect as to any particular permittee as long as the permittee submits a new Notice of Intent two (2) months prior to the expiration date in the permit. However, once this permit expires EPA cannot provide written notification of coverage under this general permit to any permittee who submits Notice of Intent to EPA after the permit's expiration date. Any permittee who was granted permit coverage prior to the expiration date will automatically remain covered by the continued permit until the earlier of:

(1) Reissuance of this permit, at which time the permittee must comply with the Notice of Intent conditions of the new permit to maintain authorization to discharge; or

(2) The permittee's submittal of a Notice of Termination; or

(3) Issuance of an individual permit for the permittee's discharges; or

(4) A formal permit decision by the Director not to reissue this general permit, at which time the permittee must seek coverage under an alternative general permit or an individual permit.

E. Monitoring and Reporting

Maine and Massachusetts

Monitoring results obtained during the previous 3 months shall be summarized for each quarter and reported on separate Discharge Monitoring Report Form(s) postmarked no later than the 15th day of the month following the completed reporting period. The reports are due on the 15th day of January, April, July and October. The first report may include less than 3 months information.

New Hampshire

Monitoring results obtained during the previous month shall be summarized for each month and reported on separate Discharge Monitoring Report Form(s) postmarked no later than the 15th day of the month following the completed reporting period. The reports are due on the 15th day of the month following the reporting period.

The reports as stated above should be sent to EPA and the States at the following addresses :

1. EPA

Submit original signed and dated DMRs and all other reports required herein at the following addressee:

U.S. Environmental Protection Agency, Water Technical Unit (SEW), Post Office Box 8127, Boston, MA 02114

2. Massachusetts Department of Environmental Protection

a. The Regional Offices wherein the discharge occurs, shall receive a copy of the DMRs required herein:

Massachusetts Department of Environmental Protection, Western Regional Office, Post Office Box 2410, Springfield, MA 01103

Massachusetts Department of Environmental Protection, Southeastern Regional Office, 20 Riverside Drive, Lakeville, MA 02347

Massachusetts Department of Environmental Protection, Northeastern Regional Office, 205A Lowell Street, Wilmington, MA 01887

Massachusetts Department of Environmental Protection, Central Regional Office, 627 Main Street, Worcester, Massachusetts 01608

b. Copies of all DMRs, toxicity tests and other notifications required by this permit shall also be submitted to the State at:

Massachusetts Department of Environmental Protection, Division of Watershed Management, 627 Main Street, Worcester, MA 01608

c. Copies of the State Application Form BRP WM 11, Appendix A-Request for General Permit coverage, may be obtained at the DEP website at *(www.state.magnet.us/dep);* by telephoning the DEP Info Service Center (Permitting) at (617)–338–2255 or 1–800–462–0444 in 508, 413, 978 and 781 area codes; or from any DEP Regional Service Center located in each Regional Office.

3. Maine Department of Environmental Protection

Signed copies of all reports required by this permit shall be sent to the State at:

Maine Department of Environmental Protection, Division of Water Resource Regulation, 17 State House, Augusta, ME 04333

4. New Hampshire Department of Environmental Services

Signed copies of all reports required by this permit shall be sent to the State at:

New Hampshire Department of Environmental Services, Water Division, P.O. Box 95, 6 Hazen Drive, Concord, New Hampshire 03302–0095

F. Additional General Permit Conditions

1. Termination of Operations

Operators of facilities and/or operations authorized under this permit shall notify the Director upon the termination of discharges. The notice must contain the name, mailing address, and location of the facility for which the notification is submitted, the NPDES permit number for the non-contact cooling water discharge identified by the notice, and an indication of whether the non-contact cooling water discharge has been eliminated or the operator of the discharge has changed. The notice must be signed in accordance with the signatory requirements of 40 CFR 122.22.

2. When the Director May Require Application for an Individual NPDES Permit

a. The Director may require any person authorized by this permit to apply for and obtain an individual NPDES permit. Any interested person may petition the Director to take such action. Instances where an individual permit may be required include the following:

(1) The discharge(s) is a significant contributor of pollution;

(2) The discharger is not in compliance with the conditions of this permit;

(3) A change has occurred in the availability of the demonstrated technology of practices for the control or abatement of pollutants applicable to the point source;

(4) Effluent limitation guidelines are promulgated for point sources covered by this permit;

(5) A Water Quality Management Plan or Total Maximum Daily Load containing requirements applicable to such point source is approved;

(6) Discharge to the territorial sea

(7) Discharge to outstanding natural resource water.

(8) The point source(s) covered by this permit no longer:

(a) Involves the same or substantially similar types of operations;

(b) Discharges the same types of wastes;

(c) Requires the same effluent limitations or operating conditions;

(d) Requires the same or similar monitoring; and

(e) In the opinion of the Director, is more appropriately controlled under a general permit than under an individual NPDES permit.

b. The Director may require an individual permit only if the permittee authorized by the general permit has been notified in writing that an individual permit is required, and has been given a brief explanation of the reasons for this decision.

3. When an Individual NPDES Permit May Be Requested

a. Any operator may request to be excluded from the coverage of this general permit by applying for an individual permit.

b. When an individual NPDES permit is issued to an operator otherwise subject to this general permit, the applicability of this permit to that owner or operator is automatically terminated on the effective date of the individual permit.

F. Summary of Responses to Public Comments

On November 23, 1999, EPA released in the **Federal Register** for public notice and comment a draft NPDES general permit for non-contact cooling water discharges in the states of ME, MA. and NH. The public comment period for this draft general permit expired on December 22, 1999.

1. Based on EPA in-house review and comment, the following items are changed with the concurrence of the respective states where appropriate:

A. Under section III—Exclusions, the first paragraph is changed to read as follows: ''This general permit is not available to facilities which have cooling water intake structures that do not reflect the best technology available for minimizing adverse environmental impact, as required by section 316(b) of the Clean Water Act. This general permit is also not available to those facilities seeking alternative thermal limitations pursuant to section 316(a) of the Clean Water Act.''

B. Under part I.A.1.a. (ME Permit), Effluent Limitations and Monitoring Requirements for pH and LC_{50} & C-NOEC are added. A new note ''j'' for toxicity testing is also added under part I.A.1.j.

C. Under part I.C.1.a (NH Permit), maximum daily flow is changed from ''Report'' to 1.0 mgd with the following note: ''The State with EPA concurrence may allow coverage under this general permit for discharges greater than 1.0 mgd when it determines that such discharge is consistent with the terms and conditions of the permit on a case by case basis without violating surface water quality standards.''

D. Under part I Final General Permits and part I.D.2.a., Geographic Areas language is added to clarify that the general permit in Maine is not available for discharges in Indian Country and to clarify that Indian Country lands are included in the Commonwealth of Massachusetts permit.

E. Under part I.D.2.b, Notification by Permittee, the following: ''(cooling water intake structures shall reflect best technology available for minimizing adverse environmental impact)'' is added after ''* * * cooling water i.e, river intake * * *'' on line 11.

2. The following items are either added or changed based on comments from the State of New Hampshire :

A. pH is added before all ''neutralization chemicals'' under part I.C.1.c.

B. In the last line of the third paragraph under part I.D.3.b, Eligibility to Apply, the word ''Notice of Termination'' is followed by the reference part I.F.1.

C. The reference to the ''Surface Water Quality Bureau'' is replaced with ''Water Division''.

3. Based on comments from MADEP the following items are either added or changed :

A. Under part I.B.1.g. the wording is changed to read ''* * * floating solids, visible oil sheen or foam other than in trace amounts.''

B. Under part I.B.1.h, add: ''Samples shall be spaced throughout the operating day and at times representative of temperature fluctuations in the discharge.''

C. Under part I.E.2.b. the wording is changed to read ''Copies of all DMRs, toxicity tests and other notifications * * *'' instead of ''except DMRs.''

4. The US Fish and Wildlife Service, in a letter dated December 17, 1999, concurred with EPA's opinion that the reissuance of the NPDES general permits will not jeopardize the continued existence of Atlantic salmon in Maine.

5. The National Marine Fisheries Service in a letter dated April 5, 2000 has concluded that the reissuance of the

general permits for the discharge of non-contact cooling water in the states of Maine, Massachusetts and New Hampshire will not likely adversely affect any endangered or threatened species under NMFS jurisdiction. NMFS also concurs with EPA's determination that this action will not have an adverse effect on essential fish habitat.

Part II, Standard Conditions

Section A. General Requirements

1. Duty To Comply

The permittee must comply with all conditions of this permit. Any permit noncompliance constitutes a violation of the Clean Water Act and is grounds for enforcement action; for permit termination, revocation and reissuance, or modification; or for denial of a permit renewal application.

a. The permittee shall comply with effluent standards or prohibitions established under section 307(a) of the CWA for toxic pollutants and with standards for sewage sludge use or disposal established under section 405 (d) of the CWA within the time provided in the regulations that establish these standards or prohibitions, even if the permit has not yet been modified to incorporate the requirement.

b. The CWA provides that any person who violates sections 301, 302, 306, 307, 308, 318, or 405 of the CWA or any permit condition or limitation implementing any of such sections in a permit issued under section 402, or any requirement imposed in a pretreatment program approved under sections 402 (a)(3) or 402 (b)(8) of the CWA is subject to a civil penalty not to exceed $25,000 per day for each violation. Any person who *negligently* violates such requirements is subject to a fine of not less than $2,500 nor more than $25,000 per day of violation, or by imprisonment for not more than 1 year, or both. Any person who *knowingly* violates such requirements is subject to a fine of not less than $5,000 nor more than $50,000 per day of violation, or by imprisonment for not more than 3 years, or both. Note: See 40 CFR 122.41(a)(2) for additional enforcement criteria.

c. Any person may be assessed an administrative penalty by the Administrator for violating sections 301, 302, 306, 307, 308, 318, or 405 of the CWA, or any permit condition or limitation implementing any of such sections in a permit issued under section 402 of the CWA. Administrative penalties for Class I violations are not to exceed $10,000 per violation, with the maximum amount of any Class I penalty assessed not to exceed $25,000. Penalties for Class II violations are not to exceed $10,000 per day for each day during which the violation continues, with the maximum amount of any Class II penalty not to exceed $125,000.

2. Permit Actions

This permit may be modified, revoked and reissued, or terminated for cause. The filing of a request by the permittee for a permit modification, revocation and reissuance, or termination, or a notification of planned changes or anticipated noncompliance does not stay any permit condition.

3. Duty To Provide Information

The permittee shall furnish to the Regional Administrator, within a reasonable time, any information which the Regional Administrator may request to determine whether cause exists for modifying, revoking and reissuing, or terminating this permit, or to determine compliance with this permit. The permittee shall also furnish to the Regional Administrator, upon request, copies of records required to be kept by this permit.

4. Reopener Clause

The Regional Administrator reserves the right to make appropriate revisions to this permit in order to establish any appropriate effluent limitations, schedules of compliance, or other provisions which may be authorized under the CWA in order to bring all discharges into compliance with the CWA.

5. Oil and Hazardous Substance Liability

Nothing in this permit shall be construed to preclude the institution of any legal action or relieve the permittee from any responsibilities, liabilities, or penalties to which the permittee is or may be subject under section 311 of the CWA, or section 106 of the Comprehensive Environmental Response, Compensation and Liability Act of 1980 (CERCLA).

6. Property Rights

The issuance of this permit does not convey any property rights of any sort, nor any exclusive privileges.

7. Confidentiality of Information

a. In accordance with 40 CFR part 2, any information submitted to EPA pursuant to these regulations may be claimed as confidential by the submitter. Any such claim must be asserted at the time of submission in the manner prescribed on the application form or instructions or, in the case of other submissions, by stamping the words ''confidential business information'' on each page containing such information. If no claim is made at the time of submission, *EPA may make the information available to the public without further notice.* If a claim is asserted, the information will be treated in accordance with the procedures in 40 CFR part 2 (Public Information).

b. Claims of confidentiality for the following information *will* be denied:

(i) The name and address of any permit applicant or permittee;

(ii) Permit applications, permits, and effluent data as defined in 40 CFR 2.302(a)(2).

c. Information required by NPDES application forms provided by the Regional Administrator under section 122.21 may not be claimed confidential. This includes information submitted on the forms themselves and any attachments used to supply information required by the forms.

8. Duty To Reapply

If the permittee wishes to continue an activity regulated by this permit after its expiration date, the permittee must apply for and obtain a new permit. The permittee shall submit a new notice of intent at least 60 days before the expiration date of the existing permit, unless permission for a later date has been granted by the Regional Administrator. (The Regional Administrator shall not grant permission for applications to be submitted later than the expiration date of the existing permit.)

9. State Authorities

Nothing in parts 122, 123, or 124 precludes more stringent State regulation of any activity covered by these regulations, whether or not under an approved State program.

10. Other Laws

The issuance of a permit does not authorize any injury to persons or property or invasion of other private rights, nor does it relieve the permittee of its obligation to comply with any other applicable Federal, State, and local laws and regulations.

Section B. Operation and Maintenance of Pollution Controls

1. Proper Operation and Maintenance

The permittee shall at all times properly operate and maintain all facilities and systems of treatment and control (and related appurtenances) which are installed or used by the permittee to achieve compliance with the conditions of this permit and with the requirements of storm water pollution prevention plans. Proper

operation and maintenance also includes adequate laboratory controls and appropriate quality assurance procedures. This provision requires the operation of back-up or auxiliary facilities or similar systems only when the operation is necessary to achieve compliance with the conditions of the permit.

2. Need To Halt or Reduce Not a Defense

It shall not be a defense for a permittee in an enforcement action that it would have been necessary to halt or reduce the permitted activity in order to maintain compliance with the conditions of this permit.

3. Duty To Mitigate

The permittee shall take all reasonable steps to minimize or prevent any discharge or sludge use or disposal in violation of this permit which has a reasonable likelihood of adversely affecting human health or the environment.

4. Bypass

a. *Definitions.* (1) ''Bypass'' means the intentional diversion of waste streams from any portion of a treatment facility.

(2) ''Severe property damage'' means substantial physical damage to property, damage to the treatment facilities which causes them to become inoperable, or substantial and permanent loss of natural resources which can reasonably be expected to occur in the absence of a bypass. Severe property damage does not mean economic loss caused by delays in production.

b. *Bypass not exceeding limitations.* The permittee may allow any bypass to occur which does not cause effluent limitations to be exceeded, but only if it also is for essential maintenance to assure efficient operation. These bypasses are not subject to the provisions of paragraphs B.4.c and 4.d of this section.

c. *Notice.* (1) *Anticipated bypass.* If the permittee knows in advance of the need for a bypass, it shall submit prior notice, if possible at least ten days before the date of the bypass.

(2) *Unanticipated bypass.* The permittee shall submit notice of an unanticipated bypass as required in paragraph D.1.e (24-hour notice).

d. *Prohibition of bypass.* (1) Bypass is prohibited, and the Regional Administrator may take enforcement action against a permittee for bypass, unless: (a) Bypass was unavoidable to prevent loss of life, personal injury, or severe property damage;

(b) There were no feasible alternatives to the bypass, such as the use of auxiliary treatment facilities, retention of untreated wastes, or maintenance during normal periods of equipment downtime. This condition is not satisfied if adequate back-up equipment should have been installed in the exercise of reasonable engineering judgment to prevent a bypass which occurred during normal periods of equipment downtime or preventive maintenance; and

(c) (i) The permittee submitted notices as required under paragraph 4.c of this section.

(ii) The Regional Administrator may approve an anticipated bypass, after considering its adverse effects, if the Regional Administrator determines that it will meet the three conditions listed above in paragraph 4.d of this section.

5. Upset

a. *Definition.* ''Upset'' means an exceptional incident in which there is unintentional and temporary non-compliance with technology-based permit effluent limitations because of factors beyond the reasonable control of the permittee. An upset does not include noncompliance to the extent caused by operational error, improperly designed treatment facilities, inadequate treatment facilities, lack of preventive maintenance, or careless or improper operation.

b. *Effect of an upset.* An upset constitutes an affirmative defense to an action brought for noncompliance with such technology-based permit effluent limitations if the requirements of paragraph B.5.c of this section are met. No determination made during administrative review of claims that noncompliance was caused by upset, and before an action for noncompliance, is final administrative action subject to judicial review.

c. *Conditions necessary for a demonstration of upset.* A permittee who wishes to establish the affirmative defense of upset shall demonstrate, through properly signed, contemporaneous operating logs, or other relevant evidence that:

(1) An upset occurred and that the permittee can identify the cause(s) of the upset;

(2) The permitted facility was at the time being properly operated;

(3) The permittee submitted notice of the upset as required in paragraphs D.1.a and 1.e (24-hour notice); and

(4) The permittee complied with any remedial measures required under B.3. above.

d. *Burden of proof.* In any enforcement proceeding the permittee seeking to establish the occurrence of an upset has the burden of proof.

Section C. Monitoring and Records

1. Monitoring and Records

a. Samples and measurements taken for the purpose of monitoring shall be representative of the monitored activity.

b. Except for records of monitoring information required by this permit related to the permittee's sewage sludge use and disposal activities, which shall be retained for a period of at least five years (or longer as required by 40 CFR part 503), the permittee shall retain records of all monitoring information, including all calibration and maintenance records and all original strip chart recordings for continuous monitoring instrumentation, copies of all reports required by this permit, and records of all data used to complete the application for this permit, for a period of at least 3 years from the date of the sample, measurement, report or application *except for the information concerning storm water discharges which must be retained for a total of 6 years.* This retention period may be extended by request of the Regional Administrator at any time.

c. Records of monitoring information shall include:

(1) The date, exact place, and time of sampling or measurements;
(2) The individual(s) who performed the sampling or measurements;
(3) The date(s) analyses were performed;
(4) The individual(s) who performed the analyses;
(5) The analytical techniques or methods used; and
(6) The results of such analyses.

d. Monitoring results must be conducted according to test procedures approved under 40 CFR part 136 or, in the case of sludge use or disposal, approved under 40 CFR part 136 unless otherwise specified in 40 CFR part 503, unless other test procedures have been specified in the permit.

e. The Clean Water Act provides that any person who falsifies, tampers with, or knowingly renders inaccurate any monitoring device or method required to be maintained under this permit shall, upon conviction, be punished by a fine of not more than $10,000, or by imprisonment for not more than 2 years, or both. If a conviction of a person is for a violation committed after a first conviction of such person under this paragraph, punishment is a fine of not more than $20,000 per day of violation, or by imprisonment of not more than 4 years, or both.

2. Inspection and Entry

The permittee shall allow the Regional Administrator, or an

authorized representative (including an authorized contractor acting as a representative of the Administrator), upon presentation of credentials and other documents as may be required by law, to:

a. Enter upon the permittee's premises where a regulated facility or activity is located or conducted, or where records must be kept under the conditions of this permit;

b. Have access to and copy, at reasonable times, any records that must be kept under the conditions of this permit;

c. Inspect at reasonable times any facilities, equipment (including monitoring and control equipment), practices, or operations regulated or required under this permit; and

d. Sample or monitor at reasonable times, for the purposes of assuring permit compliance or as otherwise authorized by the Clean Water Act, any substances or parameters at any location.

Section D. Reporting Requirements

1. Reporting Requirements

a. *Planned changes.* The permittee shall give notice to the Regional Administrator as soon as possible of any planned physical alterations or additions to the permitted facility. Notice is required only when:

(1) The alteration or addition to a permitted facility may meet one of the criteria for determining whether a facility is a new source in 40 CFR 122.29(b); or

(2) The alteration or addition could significantly change the nature or increase the quantity of pollutants discharged. This notification applies to pollutants which are subject to the effluent limitations in the permit, nor to the notification requirements under 40 CFR 122.42(a)(1).

(3) The alteration or addition results in a significant change in the permittee's sludge use or disposal practices, and such alteration, addition or change may justify the application of permit conditions different from or absent in the existing permit, including notification of additional use or disposal sites not reported during the permit application process or not reported pursuant to an approved land application plan.

b. *Anticipated noncompliance.* The permittee shall give advance notice to the Regional Administrator of any planned changes in the permitted facility or activity which may result in noncompliance with permit requirements.

c. *Transfers.* This permit is not transferable to any person except after notice to the Regional Administrator. The Regional Administrator may require modification or revocation and reissuance of the permit to change the name of the permittee and incorporate such other requirements as may be necessary under the Clean Water Act. (See section 122.61; in some cases, modification or revocation and reissuance is mandatory.)

d. *Monitoring reports.* Monitoring results shall be reported at the intervals specified elsewhere in this permit.

(1) Monitoring results must be reported on a Discharge Monitoring Report (DMR) or forms provided or specified by the Regional Administrator for reporting results of monitoring of sludge use or disposal practices.

(2) If the permittee monitors any pollutant more frequently than required by the permit using test procedures approved under 40 CFR part 136 or, in the case of sludge use or disposal, approved under 40 CFR part 136 unless otherwise specified in 40 CFR part 503, or as specified in the permit, the results of this monitoring shall be included in the calculation and reporting of the data submitted in the DMR or sludge reporting form specified by the Regional Administrator.

(3) Calculations for all limitations which require averaging of measurements shall utilize an arithmetic mean unless otherwise specified by the Regional Administrator in the permit.

e. *Twenty-four hour reporting.* (1) The permittee shall report any noncompliance which may endanger health or the environment. Any information shall be provided orally within 24 hours from the time the permittee becomes aware of the circumstances.

A written submission shall also be provided within 5 days of the time the permittee becomes aware of the circumstances. The written submission shall contain a description of the noncompliance and its cause; the period of noncompliance, including exact dates and times, and if the noncompliance has not been corrected, the anticipated time it is expected to continue; and steps taken or planned to reduce, eliminate, and prevent reoccurrence of the noncompliance.

(2) The following shall be included as information which must be reported within 24 hours under this paragraph.

(a) Any unanticipated bypass which exceeds any effluent limitation in the permit. (See section 122.41(g))

(b) Any upset which exceeds any effluent limitation in the permit.

(c) Violation of a maximum daily discharge limitation for any of the pollutants listed by the Regional Administrator in the permit to be reported within 24 hours. (See section 122.44(g))

(3) The Regional Administrator may waive the written report on a case-by-case basis for reports under paragraph D.1.e if the oral report has been received within 24 hours.

f. *Compliance Schedules.* Reports of compliance or noncompliance with, or any progress reports on, interim and final requirements contained in any compliance schedule of this permit shall be submitted no later than 14 days following each schedule date.

g. *Other noncompliance.* The permittee shall report all instances of noncompliance not reported under paragraphs D.1.d, D.1.e and D.1.f of this section, at the time monitoring reports are submitted. The reports shall contain the information listed in paragraph D.1.e of this section.

h. *Other information.* Where the permittee becomes aware that it failed to submit any relevant facts in a permit application, or submitted incorrect information in a permit application or in any report to the Regional Administrator, it shall promptly submit such facts or information.

2. Signatory Requirement

a. All applications, reports, or information submitted to the Regional Administrator shall be signed and certified. (See section 122.22)

b. The CWA provides that any person who knowingly makes any false statement, representation, or certification in any record or other document submitted or required to be maintained under this permit, including monitoring reports or reports of compliance or non-compliance shall, upon conviction, be punished by a fine of not more than $10,000 per violation, or by imprisonment for not more than 6 months per violation, or by both.

3. Availability of Reports

Except for data determined to be confidential under paragraph A.8. above, all reports prepared in accordance with the terms of this permit shall be available for public inspection at the offices of the State water pollution control agency and the Regional Administrator. As required by the CWA, effluent data shall not be considered confidential. Knowingly making any false statement on any such report may result in the imposition of criminal penalties as provided for in section 309 of the CWA.

Section E. Other Conditions

1. Definitions for Purposes of this Permit are as Follows

Administrator means the Administrator of the United States Environmental Protection Agency, or an authorized representative.

Applicable standards and limitations means all State, interstate, and Federal standards and limitations to which a ''discharge'' or a related activity is subject to, including water quality standards, standards of performance, toxic effluent standards or prohibitions, ''best management practices,'' and pretreatment standards under sections 301, 302, 303, 304, 306, 307, 308, 403, and 405 of CWA.

Application means the EPA standard national forms for applying for a permit, including any additions, revisions or modifications to the forms; or forms approved by EPA for use in ''approved States,'' including any approved modifications or revisions.

Average means the arithmetic mean of values taken at the frequency required for each parameter over the specified period. For total and/or fecal coliforms, the average shall be the geometric mean.

Average monthly discharge limitation means the highest allowable average of ''daily discharges'' over a calendar month, calculated as the sum of all daily discharges measured during a calendar month divided by the number of daily discharges measured during that month.

Average weekly discharge limitation means the highest allowable average of ''daily discharges'' over a calendar week, calculated as the sum of all daily discharges measured during a calendar week divided by the number of daily discharges measured during that week.

Best Management Practices (BMPs) means schedules of activities, prohibitions of practices, maintenance procedures, and other management practices to prevent or reduce the pollution of ''waters of the United States.'' BMPs also include treatment requirements, operating procedures, and practices to control plant site runoff, spillage or leaks, sludge or waste disposal, or drainage from raw material storage.

Best Professional Judgement (BPJ) means a case-by-case determination of Best Practicable Treatment (BPT), Best Available Treatment (BAT) or other appropriate standard based on an evaluation of the available technology to achieve a particular pollutant reduction.

Composite Sample—A sample consisting of a minimum of eight grab samples collected at equal intervals during a 24-hour period (or lesser period as specified in the section on Monitoring and Reporting) and combined proportional to flow, or a sample continuously collected proportionally to flow over that same time period.

Continuous Discharge means a ''discharge'' which occurs without interruption throughout the operating hours of the facility except for infrequent shutdowns for maintenance, process changes, or similar activities.

CWA or ''The Act'' means the Clean Water Act (formerly referred to as the Federal Water Pollution Control Act or Federal Water Pollution Control Act Amendments of 1972) Public Law 92–500, as amended by Public Law 95–217, Public Law 95–576, Public Law 96–483 and Public Law 97–117; 33 U.S.C. 1251 *et seq.*

Daily Discharge means the discharge of a pollutant measured during a calendar day or any 24-hour period that reasonably represents the calendar day for purposes of sampling. For pollutants with limitations expressed in units of mass, the daily discharge is calculated as the total mass of the pollutant discharged over the day. For pollutants with limitations expressed in other units of measurements, the daily discharge is calculated as the average measurement of the pollutant over the day.

Director means the person authorized to sign NPDES permits by EPA and/or the State.

Discharge Monitoring Report Form (DMR) means the EPA standard national form, including any subsequent additions, revisions, or modifications, for the reporting of self-monitoring results by permittees. DMRs must be used by ''approved States'' as well as by EPA. EPA will supply DMRs to any approved State upon request. The EPA national forms may be modified to substitute the State Agency name, address, logo, and other similar information, as appropriate, in place of EPA's.

Discharge of a pollutant means: (a) Any addition of any ''pollutant'' or combination of pollutants to ''waters of the United States'' from any ''point source,'' or

(b) Any addition of any pollutant or combination of pollutants to the waters of the ''contiguous zone'' or the ocean from any point source other than a vessel or other floating craft which is being used as a means of transportation.

This definition includes additions of pollutants into waters of the United States from: surface runoff which is collected or channeled by man; discharges through pipes, sewers, or other conveyances owned by a State, municipality, or other person which do not lead to a treatment works; and discharges through pipes, sewers, or other conveyances leading into privately owned treatment works.

This term does not include an addition of pollutants by any ''indirect discharger.''

Effluent limitation means any restriction imposed by the Director on quantities, discharge rates, and concentrations of ''pollutants'' which are ''discharged'' from ''point sources'' into ''waters of the United States,'' the waters of the ''contiguous zone,'' or the ocean.

Effluent limitations guidelines means a regulation published by the Administrator under Section 304(b) of CWA to adopt or revise ''effluent limitations.''

EPA means the United States ''Environmental Protection Agency.''

Grab Sample—An individual sample collected in a period of less than 15 minutes.

Hazardous Substance means any substance designated under 40 CFR part 116 pursuant to section 311 of CWA.

Maximum daily discharge limitation means the highest allowable ''daily discharge.''

Municipality means a city, town, borough, county, parish, district, association, or other public body created by or under State law and having jurisdiction over disposal or sewage, industrial wastes, or other wastes, or an Indian tribe or an authorized Indian tribe organization, or a designated and approved management agency under section 208 of CWA.

National Pollutant Discharge Elimination System means the national program for issuing, modifying, revoking and reissuing, terminating, monitoring and enforcing permits, and imposing and enforcing pretreatment requirements, under sections 307, 402, 318, and 405 of CWA. The term includes an ''approved program.''

New discharger means any building, structure, facility, or installation: (a) From which there is or may be a ''discharge of pollutants'';

(b) That did not commence the ''discharge of pollutants'' at a particular ''site'' prior to August 13, 1979;

(c) Which is not a ''new source''; and

(d) Which has never received a finally effective NPDES permit for discharges at that ''site.''

This definition includes an ''indirect discharger'' which commences discharging into ''waters of the United States'' after August 13, 1979. It also includes any existing mobile point source (other than an offshore or coastal oil and gas exploratory drilling rig or a coastal oil and gas developmental

drilling rig) such as a seafood processing rig, seafood processing vessel, or aggregate plant, that begins discharging at a ''site'' for which it does not have a permit; and any offshore or coastal mobile oil and gas exploratory drilling rig or coastal mobile oil and gas developmental drilling rig that commences the discharge of pollutants after August 13, 1979, at a ''site'' under EPA's permitting jurisdiction for which it is not covered by an individual or general permit and which is located in an area determined by the Regional Administrator in the issuance of a final permit to be an area of biological concern. In determining whether an area is an area of biological concern, the Regional Administrator shall consider the factors specified in 40 CFR 125.122.(a)(1) through (10).

An offshore or coastal mobile exploratory drilling rig or coastal mobile developmental drilling rig will be considered a ''new discharger'' only for the duration of its discharge in an area of biological concern.

New source means any building, structure, facility, or installation from which there is or may be a ''discharge of pollutants,'' the construction of which commenced:

(a) After promulgation of standards of performance under Section 306 of CWA which are applicable to such.

(b) After proposal of standards of performance in accordance with Section 306 of CWA which are applicable to such source, but only if the standards are promulgated in accordance with section 306 within 120 days of their proposal.

NPDES means ''National Pollutant Discharge Elimination System.''

Non-Contact Cooling Water is water used to reduce temperature which does not come in direct contact with any raw material, intermediate product, a waste product or finished product.

Owner or operator means the owner or operator of any ''facility or activity'' subject to regulation under the NPDES programs.

Permit means an authorization, license, or equivalent control document issued by EPA or an ''approved State.''

Person means an individual, association, partnership, corporation, municipality, State or Federal agency, or an agent or employee thereof.

Point source means any discernible, confined, and discrete conveyance, including but not limited to any pipe, ditch, channel, tunnel, conduit, well, discrete fissure, container, rolling stock, concentrated animal feeding operation, vessel, or other floating craft, from which pollutants are or may be discharged. This term does not include return flows from irrigated agriculture.

Pollutant means dredged spoil, solid waste, incinerator residue, filter backwash, sewage, garbage, sewage sludge, munitions, chemical wastes, biological materials, radioactive materials (except those regulated under the Atomic Energy Act of 1954, as amended (42 U.S.C. 2011 *et seq.*)), heat, wrecked or discarded equipment, rock, sand, cellar dirt and industrial, municipal, and agricultural waste discharged into water. It does not mean:

(a) Sewage from vessels; or

(b) Water, gas, or other material which is injected into a well to facilitate production of oil or gas, or water derived in association with oil and gas production and disposed of in a well, if the well used either to facilitate production or for disposal purposes is approved by authority of the State in which the well is located, and if the State determines that the injection or disposal will not result in the degradation of ground or surface water resources.

Primary industry category means any industry category listed in the NRDC settlement agreement (*Natural Resources Defense Council et al.* v. *Train,* 8 E.R.C. 2120 (D.D.C. 1976), modified 12 E.R.C. 1833 (D.D.C. 1979)); also listed in appendix A of 40 CFR part 122.

Process wastewater means any water which, during manufacturing or processing, comes into direct contact with or results from the production or use of any raw material, intermediate product, finished product, byproduct, or waste product.

Regional Administrator means the Regional Administrator, EPA, Region I, Boston, Massachusetts.

State means any of the 50 States, the District of Columbia, Guam, the Commonwealth of Puerto Rico, the Virgin Islands, American Samoa, the Trust Territory of the Pacific Islands.

Secondary Industry Category means any industry category which is not a ''primary industry category.''

Toxic pollutant means any pollutant listed as toxic in appendix D of 40 CFR part 122, under section 307(a)(l) of CWA.

Uncontaminated storm water is precipitation to which no pollutants have been added and has not come into direct contact with any raw material, intermediate product, waste product or finished product.

Waters of the United States means: (a) All waters which are currently used, were used in the past, or may be susceptible to use in interstate or foreign commerce, including all waters which are subject to the ebb and flow of the tide;

(b) All interstate waters, including interstate ''wetlands.''

(c) All other waters such as intrastate lakes, rivers, streams (including intermittent streams), mudflats, sandflats, ''wetlands,'' sloughs, prairie potholes, wet meadows, playa lakes, or natural ponds the use, degradation, or destruction of which would affect or could affect interstate or foreign commerce including any such waters:

(1) Which are or could be used by interstate or foreign travelers for recreational or other purposes;

(2) From which fish or shellfish are or could be taken and sold in interstate or foreign commerce; or

(3) Which are used or could be used for industrial purposes by industries in interstate commerce;

(d) All impoundments of waters otherwise defined as waters of the United States under this definition;

(e) Tributaries of waters identified in paragraphs (a)–(d) of this definition;

(f) The territorial sea; and

(g) ''Wetlands'' adjacent to waters (other than waters that are themselves wetlands) identified in paragraphs (a)–(f) of this definition.

Whole Effluent Toxicity (WET) means the aggregate toxic effect of an effluent measured directly by a toxicity test.

Wetlands means those areas that are inundated or saturated by surface or ground water at a frequency and duration sufficient to support, and that under normal circumstances do support, a prevalence of vegetation typically adapted for life in saturated soil conditions. Wetlands generally include swamps, marshes, bogs, and similar areas.

2. Abbreviations When Used in This Permit Are Defined Below

cu. M/day or M3/day—cubic meters per day
mg/l—milligrams per liter
µg/l—micrograms per liter
lbs/day—pounds per day
kg/day—kilograms per day
Temp. °C—temperature in degrees Centigrade
Temp. °F—temperature in degrees Fahrenheit
Turb.—turbidity measured by the Nephelometric Method (NTU)
pH—a measure of the hydrogen ion—concentration
CFS—cubic feet per second
MGD—million gallons per day
Oil & Grease—Freon extractable material
ml/l—milliliter(s) per liter
Cl_2—total residual chlorine

[FR Doc. 00–10186 Filed 4–24–00; 8:45 am]
BILLING CODE 6560–50–P

FARM CREDIT ADMINISTRATION

Sunshine Act Meeting, Farm Credit Administration Board; Regular Meeting

AGENCY: Farm Credit Administration.

SUMMARY: Notice is hereby given, pursuant to the Government in the Sunshine Act (5 U.S.C. 552b(e)(3)), that the May 11, 2000 regular meeting of the Farm Credit Administration Board (Board) will not be held. The FCA Board will hold a special meeting at 9:00 a.m. on Wednesday, May 3, 2000. An agenda for this meeting will be published at a later date.

FOR FURTHER INFORMATION CONTACT: Vivian L. Portis, Secretary to the Farm Credit Administration Board, (703) 883–4025, TDD (703) 883–4444.

ADDRESSES: Farm Credit Administration, 1501 Farm Credit Drive, McLean, Virginia 22102–5090.

April 18, 2000.

Vivian L. Portis,

Secretary, Farm Credit Administration Board.

[FR Doc. 00–10311 Filed 4–20–00; 4:24 pm]

BILLING CODE 6705–01–P

FEDERAL COMMUNICATIONS COMMISSION

Network Reliability and Interoperability Council

AGENCY: Federal Communications Commission.

ACTION: Notice of meeting.

SUMMARY: In accordance with the Federal Advisory Committee Act, this notice advises interested persons of the second meeting of the Network Reliability and Interoperability Council (Council) under its charter renewed as of January 6, 2000. The meeting will be held at the Federal Communications Commission in Washington, DC.

DATES: Wednesday, August 23, 2000 at 2:00 p.m. to 4:00 p.m.

ADDRESSES: Federal Communications Commission, 445 12th St. SW., Room TW–C305, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Kent R. Nilsson at 202–418–0845 or TTY 202–418–2989.

SUPPLEMENTARY INFORMATION: The Council was established by the Federal Communications Commission to bring together leaders of the telecommunications industry and telecommunications experts from academic, consumer and other organizations to explore and recommend measures that would enhance network reliability. The Council will receive reports on and discuss the progress of its three focus groups: Y2K, Network Reliability, and Interoperability. The Council may also discuss such other matters as come before it at the meeting. Members of the general public may attend the meeting. The Federal Communications Commission will attempt to accommodate as many people as possible. Admittance, however, will be limited to the seating available. The public may submit written comments before the meeting to Kent Nilsson, the Commission's Designated Federal Officer for the Network Reliability and Interoperability Council, by email (*KNILSSON@FCC.GOV*) or U.S. mail (7–B452, 445 12th St. SW., Washington, DC 20554). Real Audio and streaming video Access to the meeting will be available at http://www.fcc.gov/.

Federal Communications Commission.

Magalie Roman Salas,

Secretary.

[FR Doc. 00–10222 Filed 4–24–00; 8:45 am]

BILLING CODE 6712–01–U

FEDERAL COMMUNICATIONS COMMISSION

[Report No. 2404]

Petitions for Reconsideration of Action in Rulemaking Proceeding

April 18, 2000.

Petitions for Reconsideration have been filed in the Commission's rulemaking proceeding listed in this Public Notice and published pursuant to 47 CFR section 1.429(e). The full text of these documents are available for viewing and copying in Room CY–A257, 445 12th Street, SW., Washington, DC or may be purchased from the Commission's copy contractor, ITS, Inc. (202) 857–3800. Oppositions to this petition must be filed by May 10, 2000. See Section 1.4(b)(1) of the Commission's rules (47 CFR 1.4(b)(1)). Replies to an opposition must be filed within 10 days after the time for filing oppositions has expired.

Subject: 1998 Biennial Regulatory Review—Amendment of Part 97 of the Commission's Amateur Service Rules. (WT Docket No. 98–143).

Number of Petitions Filed: 7.

Federal Communications Commission.

Magalie Roman Salas,

Secretary.

[FR Doc. 00–10223 Filed 4–24–00; 8:45 am]

BILLING CODE 6712–01–M

FEDERAL RESERVE SYSTEM

Sunshine Act Meeting

AGENCY HOLDING THE MEETING: Board of Governors of the Federal Reserve System.

TIME AND DATE: 11:00 a.m., Monday, May 1, 2000.

PLACE: Marriner S. Eccles Federal Reserve Board Building, 20th and C Streets, N.W., Washington, D.C. 20551.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

1. Personnel actions (appointments, promotions, assignments, reassignments, and salary actions) involving individual Federal Reserve System employees.

2. Any items carried forward from a previously announced meeting.

CONTACT PERSON FOR MORE INFORMATION: Lynn S. Fox, Assistant to the Board; 202–452–3204.

SUPPLEMENTARY INFORMATION: You may call 202–452–3206 beginning at approximately 5 p.m. two business days before the meeting for a recorded announcement of bank and bank holding company applications scheduled for the meeting; or you may contact the Board's Web site at http://www.federalreserve.gov for an electronic announcement that not only lists applications, but also indicates procedural and other information about the meeting.

Dated: April 21, 2000.

Robert deV. Frierson,

Associate Secretary of the Board.

[FR Doc. 00–10442 Filed 4–21–00; 3:39 pm]

BILLING CODE 6210–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Committee on Vital and Health Statistics; Meeting

Pursuant to the Federal Advisory Committee Act, the Department of Health and Human Services announces the following advisory committee meeting.

Name: National Committee on Vital and Health Statistics (NCVHS) Executive Subcommittee.

Time and Date: 11:00 a.m. 1:00 p.m. EDT, Friday, April 28, 2000.

Place: Conference Call, Participations Dial-in Number: 1–888–422–7124, Participants Code: 284339. Host: John Lumpkin, M.D.

Status: Open.

Purpose: During this conference call, the Executive Subcommittee will discuss work plans for future activities relating to the Committee's reports on the National Health

Information Infrastructure and the 21st Century Vision on Health Statistics, as well as other activities as necessary.

Notice: This conference call is open to the public using the participants' dial-in telephone number and participants' code, but access may be limited by the number of available telephone lines.

Contact Person for More Information: Substantive program information as well as summaries of meetings and a roster of committee members may be obtained from Marjorie S. Greenberg, Executive Secretary, NCVHS, National Center for Health Statistics, Centers for Disease Control and Prevention, Room 1100, Presidential Building, 6525 Belcrest Road, Hyattsville, Maryland 20782, telephone (301) 458–4245. Information also is available on the NCVHS home page of the HHS website: //www.ncvhs.hhs.gov/, where further information will be posted when available.

Dated: April 19, 2000.

James Scanlon,

Director, Division of Data Policy, Office of the Assistant Secretary for Planning and Evaluation.

[FR Doc. 00–10277 Filed 4–24–00; 8:45 am]

BILLING CODE 4151–05–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control And Prevention

[60 Day–00–34]

Proposed Data Collections Submitted for Public Comment and Recommendations

In compliance with the requirement of Section 3506 (c)(2)(A) of the Paperwork Reduction Act of 1995, the Centers for Disease Control and Prevention (CDC) is providing an opportunity for public comment on proposed data collection projects. To request more information on the proposed projects or to obtain a copy of the data collection plans and instruments, call the CDC/ATSDR Reports Clearance Officer at (404) 639–7090.

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques for other forms of information technology. Send comments to CDC/ATSDR Reports Clearance Officer, 1600 Clifton Road, MS–D24, Atlanta, GA 30333. Written comments should be received within 60 days of this notice.

Proposed Projects

1. Know Your Status Media Campaign Evaluation

New—The Centers for Disease and Prevention's (CDC) National Center for HIV, STD, and TB Prevention (NCHSTP) proposes a media campaign to promote knowledge of HIV status, using marketing clusters to target media messages. The purpose of this campaign is to increase the number of HIV positive people who are aware of their status and are receiving appropriate medical treatment. It is believed that knowledge of infection will reduce risk behavior and medical treatment will reduce infectiousness. CDC will conduct an evaluation of this campaign which will examine 2 target clusters and 4 control clusters in about 4 cities selected for intervention. Data will be collected via 4 types of surveys: (1) Telephone surveys; (2) street intercept surveys; (3) Hotline surveys; and (4) counseling and testing site surveys. Assuming a sample size of 500 for each cluster and 2 rounds of data collection (baseline and post intervention) for the telephone survey, and sample sizes of 167 for each cluster in the street intercepts, plus the first 1,000 surveyed callers and counseling and testing site clients in each city, the totals are as below.

Telephone Survey: 20,000 respondents (members of marketing clusters in intervention cities) will be surveyed by telephone in 2 rounds (baseline and post intervention, 10,000 each). It will take approximately 15 minutes to complete the survey for a total burden of 5,000 hours. Because this survey will be conducted to home telephone numbers, there will be no cost burden to the respondents.

Street Survey: 4,000 respondents (members of marketing clusters in intervention cities) will be surveyed in street intercepts in 2 rounds (baseline and post intervention, 2,000 each). It will take approximately 15 minutes to complete the survey for a total burden of 1,000 hours. There will be no cost burden to the respondents.

Hotline Additional Questions: HIV Hotlines serving intervention cities will be asked to add questions to their existing quality control surveys. This will add up to 3 minutes to the existing surveys for a total burden of 200 hours. There will be no additional cost to the respondents.

Counseling and Testing Site Survey: HIV Testing and Counseling Sites in intervention cities will be asked to add questions to their existing data collection on persons seeking HIV counseling and testing. This will add up to 5 minutes to completing the intake data for a total burden of 333 hours. There will be no additional cost to the respondents.

This evaluation will determine the success of the media elements of the campaign, provide information for improving the campaign when it is spread to additional sites, and determine the usefulness of targeting media campaigns by market clusters.

The total cost of this evaluation to the Federal government will be $400,000 for the surveys. The total burden hours are expected to be 6533 hours. Total cost to respondents is $0.

Respondents	Number of respondents	Number of responses per respondent	Average burden per response (in hours)	Total response burden (in hours)
Telephone Survey	20,000	1	15/60	5,000
Street Survey	4,000	1	15/60	1,000
Hotline Additional Questions	4,000	1	3/60	200
Counseling and Testing Site Survey	4,000	1	5/60	333.3
Total	32,000	.....	.....	6,533

2. Prevention of HIV Infection in Youth at Risk: Developing Community-Level Intervention Strategies That Work

New—The National Center for HIV, STD and TB Prevention (NCHSTP), Centers for Disease Control and Prevention (CDC) proposes to amend the previously approved OMB clearance package no. 0920–0441, Prevention of HIV Infection in Youth at Risk: Developing Community-Level Intervention Strategies that Work. This package received a 3-year clearance for data collection. The purpose of this survey is to evaluate the effectiveness of an intervention to reduce risk behaviors associated with HIV infection or transmission among young men of various racial/ethnic groups. Across 12 cities, data is collected in the intervention and comparison areas and will be used to assess risk behaviors associated with HIV acquisition and transmission, determinants of those behaviors, and to monitor awareness, contact, and participation in the intervention. It is hoped that this intervention study will result in lowering HIV risk behaviors among young men in the target audiences, and strengthening HIV prevention programs in these local communities. The population being surveyed is young men between the ages of 15 and 25 who report practicing behaviors that put them at high risk for acquiring HIV. Across the 12 cities participating in this study, the target audiences include African-American, Asian and Pacific Islander, Hispanic or Latino, and white young men. A survey will also be administered to Community Health Advisors who provided peer outreach to the target communities.

At the time of the original submission, process forms to monitor the intervention were being developed by the study investigators. During the development of the process measures for the project, it was determined that a form would be developed to monitor the activities and attitudes (e.g., increase in self-efficacy, collective efficacy, and group cohesion) of Community Health Advisors providing peer outreach to the intervention communities. The study hypothesizes that these factors may influence the relative impact of the intervention. This submission is to amend the currently approved package to include a survey to monitor peer outreach activities.

In order to evaluate the effectiveness of the interventions, questionnaire data will be collected in intervention and comparison areas before the start of the intervention, and at the end of the study (3 years later). In addition, data will be collected at two periods during the intervention in order to monitor awareness of the intervention among the target population. Data will be collected from Community Health Advisors every quarter (90 days) in order to monitor the peer outreach component of the intervention. There are no costs to respondents for participation in the questionnaire or the survey other than the time it takes them to participate.

The burden for this collection is estimated to be approximately 30 minutes for the survey conducted before and at the end of the intervention, 30 minutes for the survey to monitor contact with the intervention, and 10 minutes for the survey conducted with Community Health Advisors. These estimates include the time needed to determine if the respondent is eligible to be interviewed, obtain informed consent, and administer the interview. Total cost to respondents is $0.

Respondents	Number of respondents	Number of responses per respondent	Average burden per response (in hours)	Total response burden (in hours)
Young Men aged 15–25 surveyed before or at end of intervention	6,000	1	30/60	3,000
Young Men aged 15–25 surveyed during the intervention	6,000	1	30/60	3,000
Community Health Advisors who conduct peer outreach/surveyed during the intervention	360	8	10/60	480
Total	12,360			6,480

3. Geo-Analysis of HIV Prevention Services Provided by CDC Directly and Indirectly Funded Community-Based Organizations (CBOs)

New—The Centers for Disease Control and Prevention's (CDC), National Center for HIV, STD, and TB Prevention (NCHSTP), Division of HIV/AIDS Prevention (DHAP) proposes an evaluation project which will build on the knowledge gained from the previous studies to provide a multi-level, geo-referenced review of CDC-funded, community-based organization (CBO)-provided HIV prevention services. The purposes of this project are: (1) To contribute to the construction of a national database of HIV prevention activities by developing a geo-coded database that identifies, locates and maps all CBOs directly and indirectly funded by CDC in the US and its territories, and (2) to evaluate the comprehensiveness of HIV prevention services in geographic areas across the United States of America and territories through the use of Geographic Information Systems (GIS) technology as the primary analytical tool.

This project is being tasked under the Enhanced Program Assessments with Laboratory Capability Task Order Contract (200–96–0511) because of its program evaluation component. By using GIS to identify gaps in service provision within a given geographic area, program changes can be recommended to those health departments and CBOs participating in the project. These recommended changes may include adjusting services provided or target populations in an effort to close identified gaps.

Collaboration between government agencies and CBOs with access to a particular group at risk has been a traditional approach in public health in the United States. CDC promotes the collaboration and coordination of HIV prevention efforts between CBOs and of CBOs with State health departments, affiliates of National and Regional Minority Organizations (NRMOs), HIV prevention service agencies, and other public agencies including substance abuse programs, educational institutions and the criminal justice system. CDC promotes collaboration as a strategy for: (1) Improving access to and for at risk populations and communities; (2) improving the direct delivery of services; (3) improving referral of clients to services; and (4) creating comprehensive HIV services in designated geographical jurisdictions.

The use of GIS will enhance the accomplishment of these three goals by providing information to funders and other shareholders to enhance CBOs in their efforts to provide interventions and client referrals and services that are accessible to the populations in need of

them. This data will assist the CDC to determine the effectiveness of federal funding, whether the funding is affecting the designated high risk or infected groups such as disproportionately affected minorities where they live, or whether or not there are available programs to link with for more comprehensive services.

The project will use appropriate technology to minimize respondent burden. A self-report mailed questionnaire, three pages in length, will be mailed. Attached, will be two maps of the geographical area (city and surrounding metropolitan area) where each CBO is located. The use of maps eliminates the need to locate maps to respond to questions concerning location and distance. This project will not be requesting information of a sensitive nature. The project deals with the types of interventions offered to high risk or HIV positive individuals, location and access.

The CDC anticipates one person per CBO (total # of approximately 2000) to complete the data collection form once during the 2000 for approximately 30 minutes. Therefore, the total response burden is estimated at 1,000 hours (2000 × .5 × 1). The total cost to respondents is estimated at $17,000 assuming a working wage for assigned CBO personnel of $17.00 per hour. There are no costs to respondents for participation in the study other than the time (.5 hours) it takes to complete the questionnaire. The total cost to respondents $0.

Respondents	Number of respondents	Number of responses	Average hour burden per response	Total response burden
GIS Questionnaire for Directly and Indirectly Funded CBOs	2000	1	30/60	1000
Total	2000			1000

4. Supplement to HIV/AIDS Surveillance (SHAS) Project

Revision—The Centers for Disease Control and Prevention (CDC) is proposing revisions to the currently approved questionnaire for the Supplement to HIV/AIDS Surveillance (SHAS) project (OMB No. 0920–0262). This questionnaire provides detailed information about persons with HIV infection which continues to be of significant interest to public health, community, minority groups and affected groups. Since 1989, the CDC, in collaboration with 12 State and local health agencies, has collected data through the national Supplemental HIV/AIDS Surveillance project. The objective of this project is to obtain increased descriptive information on persons with newly reported HIV and AIDS infections, including sociodemographic characteristics, risk behaviors, use of health care services, sexual and substance abuse behaviors, minority issues and adherence to therapy. The revised questionnaire will address important emerging surveillance and prevention issues, particularly those related to the recent advances in therapy for HIV infection. This information supplements routine national HIV/AIDS surveillance and is used to improve CDC's understanding of minority issues related to the epidemic of HIV, target educational efforts to prevent transmission, and improve services for persons with HIV infection.

Respondents	Number of respondents	Number of responses per respondent	Average burden per response (in hours)	Total burden (hours)
Georgia	292	1	.75	219
California	301	1	.75	226
Michigan	82	1	.75	62
New Mexico	81	1	.75	61
Arizona	165	1	.75	124
Colorado	139	1	.75	104
Connecticut	229	1	.75	172
Delaware	43	1	.75	32
Florida	430	1	.75	323
South Carolina	270	1	.75	203
New Jersey	86	1	.75	65
Washington	160	1	.75	120
Total	2,278	1	.75	1,709

5. Message-Based Intervention for Technology Transfer

New—The mission of the National Institute for Occupational Safety and Health (NIOSH) is to promote safety and health at work for all people through research and prevention. Over 6 million American workers are at risk for inhalation exposure of potentially harmful metals. Workers in mining, construction, and related industries are potentially exposed to airborne contaminants such as silver, lead, nickel, manganese, chromium and zinc which can cause health problems ranging from metal fume fever and asthma to cancer and parkinsonism. NIOSH has developed analytical methods for portable field exposure assessment that would help reduce metals exposure. The goal of this project is to increase the self-reported use of NIOSH developed analytical methods for field portable exposure assessment by American industrial hygienists across the five-year period from 2000 to 2004. To achieve this technology transfer goal, NIOSH proposes three aims: (1) To create, (2) implement, and (3) evaluate a message-based intervention targeted toward American industrial hygienists. If this project is successful then NIOSH will also have

developed and validated a communication strategy that could be adapted to other technology transfer problems.

First, NIOSH will develop a message-based intervention targeted toward American industrial hygienists. To do this, NIOSH will create and pretest the message, channel, and receiver variables that will compose the intervention. Pretesting of the intervention will occur via mailout surveys and on-site pretesting with industrial hygienists attending conferences sponsored by AIHA (the American Industrial Hygiene Association), ABIH (the American Board of Industrial Hygiene), and ACGIH. Pretesting will occur during the first two years of the project (2000–1), with a total of 1,000 industrial hygienists.

Second, NIOSH will implement the multi-channel, multi-exposure, message-based intervention that was created through pretesting. NIOSH intends to employ the following four channels of: (1) Trade print sources (journal and magazine); (2) web site; (3) direct personalized mailings; and (4) face-to-face interaction through trade show demonstrations. The entire population of American industrial hygienists (approximately 13,000) will be targeted by this intervention. The intervention will occur across four years, applying modifications as needed during the time period.

Finally, NIOSH will conduct annual surveys of randomly selected samples of American industrial hygienists on their self reported use of NIOSH developed analytical methods for field portable exposure assessment through mail-in surveys based on standard HCRB communication and outcome protocols. During Year 1 (2000), a survey of 700 randomly selected industrial hygienists will be conducted to assess baseline levels of attitudes, knowledge and behaviors with regard to the use of the NIOSH developed analytical methods prior to receiving the intervention. During the next four years (2001–2004), an annual survey of 700 randomly selected industrial hygienists will be conducted to evaluate the impact of the message-based intervention on the use of NIOSH analytical methods (total across all years=2800 respondents).

The total cost to respondents is $64,770.

Respondents	Number of respondents	Number of responses	Average hour burden per response	Total response burden
Industrial Hygienist	1000 pretesting	1	.33	330
	700 Baseline Survey	1	.25	175
	2800 Annual Survey	1	.5	1,400
Total				1,905

Dated: April 18, 2000.

Nancy Cheal,

Acting Associate Director for Policy, Planning, and Evaluation Centers for Disease Control and Prevention (CDC).

[FR Doc. 00–10237 Filed 4–24–00; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Healthcare Infection Control Practices Advisory Committee (HICPAC): Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), the Centers for Disease Control and Prevention (CDC) announces the following meeting.

Name: Healthcare Infection Control Practices Advisory Committee (Formerly Hospital Infection Control Practices Advisory Committee).

Times and Dates: 8:30 a.m.–5 p.m., May 22, 2000. 8:30 a.m.–4 p.m., May 23, 2000.

Place: Atlanta Marriott Century Center, 2000 Century Boulevard, NE, Atlanta, Georgia 30345.

Status: Open to the public, limited only by the space available.

Purpose: The Committee is charged with providing advice and guidance to the Secretary, the Assistant Secretary for Health, the Director, CDC, and the Director, National Center for Infectious Diseases (NCID), regarding (1) the practice of hospital infection control; (2) strategies for surveillance, prevention, and control of infections (e.g., nosocomial infections), antimicrobial resistance, and related events in settings where healthcare is provided; and (3) periodic updating guidelines and other policy statements regarding prevention of healthcare associated infections and healthcare-related conditions.

Matters to be Discussed: Agenda items will include a review proposed revisions to the Guideline for Prevention of Intravascular Device-related Infections, the Guideline for Hand Hygiene, and the Recommendations for Preventing the Spread of Vancomycin Resistance in Hospitals; a discussion of strategies for evaluation of HICPAC guidelines; a review of the fourth draft of the Guideline for Environmental Controls in Healthcare Settings, 2001, and the first draft of the Guideline for Prevention of Nosocomial Pneumonia, 2001; and a review of CDC activities of interest to the Committee, including the Institute of Medicine Report on Medical Errors.

Agenda items are subject to change as priorities dictate.

Contact Person for More Information: Michele L. Pearson, M.D., Medical Epidemiologist, Investigation and Prevention Branch, Hospital Infections Program, NCID, CDC, 1600 Clifton Road, NE, M/S E–69, Atlanta, Georgia 30333, telephone 404/639–6413.

The Director, Management Analysis and Services office has been delegated the authority to sign **FEDERAL REGISTER** notices pertaining to announcements of meetings and other committee management activities, for both the Centers for Disease Control and Prevention and the Agency for Toxic Substances and Disease Registry.

Dated: April 18, 2000.

John Burckhardt,

Acting Director, Management Analysis and Services Office, Centers for Disease Control and Prevention (CDC).

[FR Doc. 00–10238 Filed 4–24–00; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

Proposed Information Collection Activity; Comment Request

Proposed Projects

Title: Information Collection Items in the Head Start Performance Standards (current rule).

OMB No.: 0970–0148.

Description: The Head Start Performance Standards are regulations which establish standards for Head Start grantee and delegate agencies to follow to administer quality programs as required by law. Local programs are monitored for compliance with these standards. The information collection aspects of the Performance Standards are one part of the many actions that local agencies must take to ensure they administer quality programs. Almost all these information collections items are

record keeping requirements such as recording: nutrition assessment data, family partnership development, and regular volunteer screening for tuberculosis. These records are intended to act as a management tool for grantees to use in their daily operations. Such records are maintained by the grantees and are not information items which must be collected and then forwarded to the Federal government.

Respondents: Head Start grantee and delegate agencies.

ANNUAL BURDEN ESTIMATES

Instrument	Number of respondents	Number of responses per respondent	Average burden hours per response	Total burden hours
Performance Standards	2,472	Once a year	594	1,468,626

Estimated Total Annual Burden Hours: 1,468,626.

In compliance with the requirements of Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Administration for Children and Families is soliciting public comment on the specific aspects of the information collection described above. Copies of the proposed collection of information can be obtained and comments may be forwarded by writing to the Administration for Children and Families, Office of Information Services, 370 L'Enfant Promenade, SW, Washington, DC 20447, Attn: ACF Reports Clearance Officer. All requests should be identified by the title of the information collection.

The Department specifically requests comments on: (a) whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Consideration will be given to comments and suggestions submitted within 60 days of this publication.

Dated: April 20, 2000.

Bob Sargis,

Reports Clearance Officer.

[FR Doc. 00–10276 Filed 4–24–00; 8:45 am]

BILLING CODE 4184–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Care Financing Administration

[Document Identifier: HCFA–R–296]

Agency Information Collection Activities: Submission for OMB Review; Comment Request

In compliance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Health Care Financing Administration (HCFA), Department of Health and Human Services, is publishing the following summary of proposed collections for public comment. The proposed collections consist of uniform mandatory notices to be given to Medicare home health beneficiaries by home health agencies (HHAs) when the HHA believes that services may not or may no longer be covered. As a result of comments to the effect that the notices are poorly designed in that they are too long, complex, and overcrowded with symbols, the Home Health Advance Beneficiary Notices have been revised. These revisions consist of simplifications of the graphics, giving the notices a notably less cluttered look; reordering of the text and options, and elimination of some repetition in order to reduce complexity. As a result of comments suggesting a fourth option for billing another insurer and suggesting removal of the reference to the beneficiary's ''need'' for care in Option ''A,'' the Home Health Advance Beneficiary Notices have been revised by adding clarifying language to Option ''B'' (now Option ''1''), emphasizing that other insurers may be billed, and by rewording Option ''A'' (now Option ''2''), removing the reference to the ''need'' for care. As a result of a comment that there was a lack of information in the notices about legal assistance for beneficiaries, the Home Health Advance Beneficiary Notices have been revised to include information about legal assistance for beneficiaries and some other related access-to-assistance information, as a new page, and to include a brief notice about beneficiaries' right to have their personal health information kept confidential. Interested persons are invited to send comments regarding the revisions, and burden or any other aspect of these collections of information requirements. Comments may also be sent regarding the following subjects: (1) The necessity and utility of the proposed information collection for the proper performance of the agency's functions; (2) the accuracy of the estimated burden; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) the use of automated collection techniques or other forms of information technology to minimize the information collection burden.

Type of Information Collection Request: Revision of a currently approved collection.

Title of Information Collection: Home Health Advance Beneficiary Notices (HHABNs) and Supporting Regulations in 42 CFR Section 411.404–.406, 484.10, and 484.12(a).

Form No.: HCFA–R–0296 (OMB# 0938–0781).

Use: Beneficiaries must receive timely, accurate, complete, and useful notices which will enable them to make informed consumer decisions, with a proper understanding of their rights to a Medicare initial determination, their appeal rights in the case of payment denial, and how these rights are waived if they refuse to allow their health information to be sent to Medicare. It is essential that such notice be timely, readable and comprehensible, provide clear directions, and provide accurate and complete information about the services affected and the reason that Medicare denial of payment for those services is expected by the HHA. For these reasons, uniform mandatory notices (the HHABNs) with very specific content and graphic design have been prepared, which are to be used by all

HHAs furnishing services to Medicare beneficiaries.

When an HHA expects payment for the home health services to be denied by Medicare, a beneficiary must be advised before home health care is initiated or continued that, in the HHA's opinion, payment probably will be required from him or her personally or through other insurance. The HHABNs are designed to ensure that HHAs inform beneficiaries in writing, in a timely fashion, about changes to their home health care, the fact that they may have to pay for care themselves if Medicare does not pay, the process they must follow in order to obtain an initial determination by Medicare and, if payment is denied, to file an appeal, and the fact that they waive those rights if they refuse to allow their health information to be sent to Medicare. The HHABNs are to be issued by the HHA each time, and as soon as, the HHA makes the assessment that it believes Medicare payment will not be made. The HHABNs are to be provided by HHAs in any case where a reduction or termination of services is to occur, or where services are to be denied before being initiated, except in any case in which a physician concurs in the reduction, termination, or denial of services. Failure to do so would be a violation of the HHA Conditions of Participation in the Medicare Program, which are currently approved PRA requirements approved under OMB number 0938–0365, and may result in the HHA being held liable under the Limitation on Liability (LOL) provision.

Home Health Advance Beneficiary Notices (HHABNs)

HHABNs serve as notice to the beneficiary that the HHA believes that home health services are not, or will no longer be, covered in different situations. HHABN–T, Termination, is used when all home health services will be terminated. HHABN–I, Initiation, is used when the HHA expects, even before services have been initiated, that Medicare will not pay. HHABN–R, Reduction, is used when ongoing home health services will be reduced (e.g., reduced in number, frequency, or for a particular subset of services, or otherwise).

Frequency: On occasion.

Affected Public: Individuals or Households, Business or other for-profit, Not-for-profit institutions.

Number of Respondents: 540,000.

Total Annual Responses: 1,080,000.

Total Annual Hours: 180,000.

To obtain copies of the supporting statement for the proposed paperwork collections referenced above, access HCFA's Web Site Address at http://www.hcfa.gov/regs/prdact95.htm, or E-mail your request, including your address and phone number, to Paperwork@hcfa.gov, or call the Reports Clearance Office on (410) 786–1326. Written comments and recommendations for the proposed information collections must be mailed within 30 days of this notice directly to the OMB Desk Officer designated at the following address: OMB Human Resources and Housing Branch, Attention: Allison Eydt, New Executive Office Building, Room 10235, Washington, D.C. 20503.

Dated: April 10, 2000.

John P. Burke III,

HCFA Reports Clearance Officer, HCFA, Office of Information Services, Security and Standards Group, Division of HCFA Enterprise Standards.

[FR Doc. 00–10268 Filed 4–24–00; 8:45 am]

BILLING CODE 4120–03–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4563–N–04]

Notice of Proposed Information Collection for Indian Housing Drug Elimination Program; Notice of Funding Availability

AGENCY: Office of the Assistant Secretary for Public and Indian Housing, HUD.

ACTION: Notice.

SUMMARY: The proposed information collection requirement described below will be submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

DATES: *Comments Due Date:* June 26, 2000.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and/or OMB Control number and should be sent to: Mildred M. Hamman, Reports Liaison Officer, Public and Indian Housing, Department of Housing and Urban Development, 451 7th Street, SW., Room 4238, Washington, DC 20410–5000.

FOR FURTHER INFORMATION CONTACT: Mildred M. Hamman, (202) 708–3642, extension 4128, for copies of the proposed forms and other available documents. (This is not a toll-free number).

SUPPLEMENTARY INFORMATION: The Department will submit the proposed information collection to OMB for review, as required by the Paperwork Reduction Act of 1995 (44 U.S.C. chapter 35, as amended).

This Notice is soliciting comments from members of the public and affected agencies concerning the proposed collection of information to: (1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information; (3) enhance the quality, utility, and clarity of the information to be collected; and (4) minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated collection techniques or other forms of information technology; *e.g.,* permitting electronic submission of responses.

This Notice also lists the following information:

Title of Proposal: Indian Housing Drug Elimination Program Notice of Funding Availability.

OMB Control Number: 2577–xxxx.

Description of the need for the information and proposed use: The Indian Housing Drug Elimination Program requires eligible tribes and Native American Housing Assistance and Self Determination Act (NAHASDA) recipients (which includes both tribes and tribally designated housing entities (TDHEs) to submit specific information that is necessary if they want to implement security and substance abuse prevention programs in their communities. HUD will select applicants who successfully respond to the five rating factors listed in the NOFA for this competitive funding program.

Agency form numbers, if applicable: None.

Members of affected public: State or Local Government (Indian Tribes and Alaska Native Villages).

Estimation of the total number of hours needed to prepare the information collection including number of respondents, frequency of response, and hours of response: 40 average hours per response, approximately 144 respondents on an annual basis, 5,760 hours for a total reporting burden.

Status of the proposed information collection: New.

Authority: Section 3506 of the Paperwork Reduction Act of 1995, 44 U.S.C. Chapter 35, as amended.

Harold Lucas,

Assistant Secretary for Public and Indian Housing.

[FR Doc. 00–10234 Filed 4–24–00; 8:45 am]

BILLING CODE 4210–33–M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4561–N–31]

Notice of Submission of Proposed Information Collection to OMB; Federally Assisted Low-Income Housing Drug Elimination Grants

AGENCY: Office of the Chief Information Officer, HUD.

ACTION: Notice.

SUMMARY: The proposed information collection requirement described below has been submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

DATES: *Comments Due Date:* May 25, 2000.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and/or OMB approval number (2502–0476) and should be sent to: Joseph F. Lackey, Jr., OMB Officer, Office of Management and Budget, Room 10235, New Executive Office Building, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Wayne Eddins, Reports Management Officer, Q, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410; e-mail Wayne_Eddins@HUD.gov; telephone (202) 708–2374. This is a toll-free number. Copies of the proposed forms and other available documents submitted to OMB may be obtained from Mr. Eddins.

SUPPLEMENTARY INFORMATION: The Department has submitted the proposal for the collection of information, as described below, to OMB for review, as required by the Paperwork Reduction Act (44 U.S.C. Chapter 35). The Notice lists the following information: (1) The title of the information collection proposal; (2) the office of the agency to collect the information; (3) the OMB approval number, if applicable; (4) the description of the need for the information and its proposed use; (5) the agency form number, if applicable; (6) what members of the public will be affected by the proposal; (7) how frequently information submissions will be required; (8) an estimate of the total number of hours needed to prepare the information submission including number of respondents, frequency of response, and hours of response; (9) whether the proposal is new, an extension, reinstatement, or revision of an information collection requirement; and (10) the name and telephone number of an agency official familiar with the proposal and of the OMB Desk Officer for the Department.

This Notice also lists the following information:

Title of Proposal: Federally Assisted Low-Income Housing Drug Elimination Grants.

OMB Approval Number: 2502–0476.

Form Numbers: HUD–50080–DF2B, SF–269, SF–424, SF–424–A, HUD–2880, SF–LLL.

Description of the Need for the Information and its Proposed Use: This package is a request to reinstate and revise the current OMB approval for this Information Collection. It adds three new financial and performance reporting requirements and changes requirements related to the application for grant funds.

Respondents: Business or other Not-for-profit.

Frequency of Submission: On occasion, Semi-annually.

Reporting Burden:

	Number of respondents	×	Frequency of response	×	Hours per response	=	Burden hours
Recordkeeping	450		3.3		37.3		55,950

Total Estimated Burden Hours: 55,950

Status: Reinstate with change.

Authority: Section 3507 of the Paperwork Reduction Act of 1995, 44 U.S.C. 35, as amended.

Dated: April 14, 2000.

Wayne Eddins,

Departmental Reports Management Officer, Office of the Chief Information Officer.

[FR Doc. 00–10233 Filed 4–24–00; 8:45 am]

BILLING CODE 4210–01–M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4561–N–32]

Notice of Submission of Proposed Information Collection to OMB; Alaska Native/Native Hawaiian Institutions Assisting Communities Program (AN/NHIAC)

AGENCY: Office of the Chief Information Officer, HUD.

ACTION: Notice.

SUMMARY: The proposed information collection requirement described below has been submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

DATES: *Comments Due Date:* May 25, 2000.

ADDRESSES: Interested persons are invited to submit comments regarding the proposal. Comments should refer to the proposal by name and/or OMB approval number (2528–0206) and should be sent to: Joseph F. Lackey, Jr., OMB Desk Officer, Office of Management and Budget, Room 10235, New Executive Office Building, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Wayne Eddins, Reports Management Officer Q, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410 e-mail Wayne__Eddins@HUD.gov; telephone (202) 708–2375. This is not a toll-free number. Copies of the proposed forms and other available documents submitted to OMB may be obtained from Mr. Eddins.

SUPPLEMENTARY INFORMATION: The Department has submitted the proposal for the collection of information, as described below, to OMB for review, as required by the Paperwork Reduction Act (44 U.S.C. Chapter 35). The Notice lists the following information: (1) The title of the information collection proposal; (2) the office of the agency to collect the information; (3) the OMB approval number, if applicable; (4) the description of the need for the information and its proposed use; (5) the agency form number, if applicable; (6) what members of the public will be affected by the proposal; (7) how frequently information submissions will be required; (8) an estimate of the total number of hours needed to prepare the

information submission including number of respondents, frequency of response, and hours of response; (9) whether the proposal is new, an extension, reinstatement, or revision of an information collection requirement; and (10) the name and telephone number of an agency official familiar with the proposal and of the OMB Desk Officer for the Department.

This Notice also lists the following information:

Title of Proposal: Alaska Native/Native Hawaiian Institutions Assisting Communities Program (AN/NHIAC).

OMB Approval Number: 2528–0206.

Form Numbers: HUD–30005.

Description of the Need of the Information and its Proposed Use: Alaska Native/Native Hawaiian Colleges and universities will receive competitive grants to undertake CDBG-eligible activities to expand their role and effectiveness in helping their communities with neighborhood revitalization, housing, and economic development.

Respondents: Not-for-Profit entities.

Frequency of Submission: Semi-Annually, End of Grant.

	Number of respondents	×	Frequency of response	×	Hours per response	=	Burden hours
Reporting Burden	18		2		51		1,824

Total Estimated Burden Hours: 1,824.

Status: Reinstate approval without change.

Authority: Section 3507 of the Paperwork Reduction Act of 1995, 44 U.S.C. 35, as amended.

Dated: April 19, 2000.

Wayne Eddins,

Departmental Reports Management Officer, Office of the Chief Information Officer.

[FR Doc. 00–10235 Filed 4–24–00; 8:45 am]

BILLING CODE 4210–01–M

INTER-AMERICAN FOUNDATION BOARD MEETING

Sunshine Meeting Notice

TIME AND DATE: May 23, 2000, 11:30 a.m.–3:30 p.m.

PLACE: 901 N. Stuart Street, Tenth Floor, Arlington, Virginia 22203.

STATUS: Open session except for the portion specified as closed session as provided in 22 CFR Part 1004.4 (f).

MATTERS TO BE CONSIDERED: Approval of the Minutes of the January 31, 2000, Meeting of the Board of Directors

Discussion of Fiscal Year 1999 Grant Results Report

Discussion of Fiscal Year 2000 Programs and Operations

Report on Congressional Activities

Closed Session To Discuss Personnel Issues. Closed session as provided in 22 CFR Part 1004.4 (f).

CONTACT PERSON FOR MORE INFORMATION: Adolfo A. Franco, Secretary to the Board of Directors, (703) 306–4325.

Dated: April 12, 2000.

Adolfo A. Franco,

Sunshine Act Officer.

[FR Doc. 00–10364 Filed 4–21–00; 12:52 pm]

BILLING CODE 7025–01–U

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Notice of Receipt of Applications for Permit

Endangered Species

The following applicants have applied for a permit to conduct certain activities with endangered species. This notice is provided pursuant to Section 10(c) of the Endangered Species Act of 1973, *as amended* (16 U.S.C. 1531, *et seq.*):

Applicant: Fort Wayne Children's Zoo, Fort Wayne, IN, PRT–025617

The applicant requests a permit to import one captive-born female Amur leopard (*Panthera pardus orientalis*) from Jungle Cat World, Ontario, Canada for the enhancement of propagation and conservation education.

Applicant: Mark A. Metzger, W. Alexandria, OH, PRT–025214

The applicant requests a permit to import the sport-hunted trophy of one male bontebok (*Damaliscus pygargus dorcas*) culled from a captive herd maintained under the management program of the Republic of South Africa, for the purpose of enhancement of the survival of the species.

Applicant: The Zoo Gulf Breeze, Gulf Breeze, FL, PRT–022467

The applicant requests a permit to export three captive-born female Ringed Tailed Lemurs (*Lemur catta*) to Parque Sur de Maracaibo, Maracaibo, Venezuela, to enhance the survival of the species through public education.

Applicant: Albuquerque Biological Park/Rio Grande Zoo, Albuquerque, NM, PRT–023518

The applicant requests a permit to import two captive-born male jaguars (*Panthera onca*) from Parque Zoologico de Leon, Leon, Mexico, to enhance the survival of the species through conservation education.

Applicant: Coronas Entertainment, Bradenton, FL, PRT–023228

The applicant requests a permit to export and re-import African leopard (*Panther pardus*), and progeny of the animals currently held by the applicant and any animals acquired in the United States by the applicant to/from worldwide locations to enhance the survival of the species through conservation education.

This notification covers activities conducted by the applicant over a three year period.

Marine Mammal

The public is invited to comment on the following application for a permit to conduct certain activities with marine mammals. The application was submitted to satisfy requirements of the Marine Mammal Protection Act of 1972, *as amended* (16 U.S.C. 1361 *et seq.*) and the regulations governing marine mammals (50 CFR 18).

Applicant: Henry McNatt, Lutz, FL, PRT–025213

The applicant requests a permit to import a polar bear (*Ursus maritimus*) sport-hunted from the Lancaster Sound polar bear population, Northwest Territories, Canada for personal use.

Applicant: Gregory Gibson, Terre Haute, IN, PRT–025212

The applicant requests a permit to import a polar bear (*Ursus maritimus*) sport-hunted from the Southern Beaufort Sea polar bear population, Northwest Territories, Canada for personal use.

Applicant: Tim Gott, Southwest Harbor, ME, PRT–025211

The applicant requests a permit to import a polar bear (*Ursus maritimus*) sport-hunted from the Southern Beaufort Sea polar bear population, Northwest Territories, Canada for personal use.

Applicant: Bruce Pelletier, Rockwood, ME, PRT–025210

The applicant requests a permit to import a polar bear (*Ursus maritimus*) sport-hunted from the Southern Beaufort Sea polar bear population, Northwest Territories, Canada for personal use.

Applicant: Patrick B. Sands, Dallas, TX, PRT–025227

The applicant requests a permit to import a polar bear (*Ursus maritimus*) sport-hunted from the Lancaster Sound polar bear population, Northwest Territories, Canada for personal use.

Written data or comments should be submitted to the Director, U.S. Fish and Wildlife Service, Office of Management Authority, 4401 North Fairfax Drive, Room 700, Arlington, Virginia 22203 and must be received by the Director within 30 days of the date of this publication.

Documents and other information submitted with these applications are available for review, *subject to the requirements of the Privacy Act and Freedom of Information Act,* by any party who submits a written request for a copy of such documents to the following office within 30 days of the date of publication of this notice: U.S. Fish and Wildlife Service, Office of Management Authority, 4401 North Fairfax Drive, Room 700, Arlington, Virginia 22203. Phone: (703/358–2104); FAX: (703/358–2281).

Dated: April 20, 2000.

Kristen Nelson,

Chief, Branch of Permit, Office of Management Authority.

[FR Doc. 00–10280 Filed 4–24–00; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Notice of Availability of the Final Environmental Impact Statement and Associated Comprehensive Conservation Plan for the Little Pend Oreille National Wildlife Refuge

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of Availability of the Final Environmental Impact Statement and associated Comprehensive Conservation Plan for the Little Pend Oreille National Wildlife Refuge.

SUMMARY: Pursuant to Section 102(2) of the National Environmental Policy Act of 1969, the U.S. Fish and Wildlife Service (Service) announces that the final Environmental Impact Statement and associated Comprehensive Conservation Plan (Final CCP/EIS) for Little Pend Oreille National Wildlife Refuge, Stevens County, Washington is available for public review. Five alternatives for management of the Little Pend Oreille National Wildlife Refuge (Little Pend Oreille NWR, Refuge), including a no-action alternative, were considered in the planning process.

DATES: Written comments must be received at the address below by May 25, 2000. The Service will take no action on this proposal for the thirty-day period of availability, in accordance with the Council of Environmental Quality Regulations, 40 CFR 1506.10(b)(2). After a minimum of 30 days following the filing of the Final EIS, a Record of Decision to implement the proposed action will be signed.

ADDRESSES: Comments should be addressed to: Refuge Manager, Little Pend Oreille National Wildlife Refuge, 1310 Bear Creek Road, Colville, Washington 99114, phone (509) 684–8384. In addition, the Final CCP/EIS is available on the internet via the Fish and Wildlife Service Region 1 Planning Home Page at *http://www.r1.fws.gov/planning/plnhome.html.* Public reading copies of the Final CCP/EIS will be available at the Refuge Headquarters and at the following libraries: Chewelah Public Library, Colville Public Library, Deer Park Public Library, Kettle Falls Public Library, Newport Public Library, and Spokane Public Library.

FOR FURTHER INFORMATION CONTACT: Lisa Langelier, Refuge Manager, Little Pend Oreille National Wildlife Refuge, at the above address. Printed copies have been sent to agencies, organizations, officials, and selected individuals who participated in the scoping process. A planning update summarizing the CCP/EIS has also been mailed to all individuals and organizations on the CCP mailing list. Individuals wishing Compact Discs of this CCP/EIS for review should immediately contact the above individual.

SUPPLEMENTARY INFORMATION: The U.S. Fish and Wildlife Service began the process of developing a management plan for the 40,198 acre Little Pend Oreille NWR in 1995. The National Wildlife Refuge System Improvement Act of 1997 requires that each national wildlife refuge be managed under a comprehensive conservation plan. The Service has prepared a final EIS, the proposed action being to develop and implement a Comprehensive Conservation Plan for the Refuge that best achieves the Refuge's purpose, vision and goals; contributes to the Refuge System mission; addresses the significant issues and relevant mandates; and is consistent with principles of sound fish and wildlife management.

Alternative E, identified as the Agency Preferred Alternative (modified from draft), places management emphasis on restoration of habitat components along with a mix of existing uses and priority recreation activities.

Public comment has been requested, considered, and incorporated throughout the planning process in numerous ways. Public outreach included open houses, public meetings, plan work group meetings, a camping evaluation, planning update mailings, and **Federal Register** notices. Five previous notices were published in the **Federal Register** concerning this CCP/EIS (61 FR 65591, Dec. 13, 1996; 63 FR 39884, July 24, 1998; 64 FR 24168, May 5, 1999; 64 FR 36712, July 7, 1999; 64 FR 46404, Aug. 25, 1999).

During the Draft CCP/EIS comment period that occurred from May 5 to August 31, 1999, the Service received a total of 300 communications (letters, faxes, postcards, email, visits, or telephone calls) representing 327 persons. The Service also received three petitions signed by a total of 318 people. All substantive issues raised in the comments to the Draft CCP/EIS have been addressed through revisions incorporated into the Final CCP/EIS text or responses contained in Appendix J of the Final CCP/EIS.

After the review period ends for the Final CCP/EIS, comments will be analyzed and considered by the Service in the Record of Decision. All comments received from individuals on Environmental Impact Statements become part of the official public record. Requests for such comments will be handled in accordance with the Freedom of Information Act, the Council on Environmental Quality's NEPA regulations [40 CFR 1506.6(f)], and other Service and Departmental policy and procedures. When requested, the Service generally will provide comment letters with the names and addresses of the individuals who wrote the comments. However, the telephone number of the commenting individual will not be provided in response to such requests to the extent permissible by law. Additionally, public comment letters are not required to contain the commentator's name, address, or other identifying information. Such comments may be submitted anonymously to the Service.

Dated: April 18, 2000.

Richard A. Coleman,

Acting Regional Director, Acting Region 1, Portland, Oregon.

[FR Doc. 00–10240 Filed 4–24–00; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Notice of Availability of an Environmental Assessment and Receipt of a Safe Harbor Application To Enhance the Propagation and Survival of the Black-Capped Vireo and the Golden-Cheeked Warbler in the Hill Country of Texas

SUMMARY: Environmental Defense, Inc. (Applicant) has applied to the U.S. Fish and Wildlife Service (Service) for an enhancement of survival permit pursuant to Section 10(a)(1)(A) of the Endangered Species Act (Act) of 1973, as amended. The Applicant has been assigned permit number TE–024875–0. The requested permit, which is for a period of 30 years, would authorize the Applicant to issue certificates of inclusion under a Safe Harbor agreement to private landowners who voluntarily agree to carry out habitat improvements for the black-capped vireo (Vireo atricapillus) and/or the golden-cheeked warbler (Dendroica chrysoparia) in various counties in central Texas Hill Country.

Habitat enhancement activities could occur in any or all of the following 25 counties: Bandera, Bell, Blanco, Bosque, Brown, Burnet, Comal, Comanche, Coryell, Edwards, Gillespie, Hays, Kendall, Kerr, Kimble, Lampasas, Llano, Mason, Medina, Real, San Saba, Somervell, Sutton, Uvalde, and Williamson. Habitat enhancement activities could include, but are not limited to, prescribed burning, selective Ashe juniper thinning, rotational grazing, cowbird trapping, and hardwood regeneration.

The Service has prepared an Environmental Assessment (EA) for the application. A determination of jeopardy to the species or a Finding of No Significant Impact (FONSI) will not be made until at least 30 days from the date of publication of this notice. This notice is provided pursuant to Section 10(c) of the Act and National Environmental Policy Act regulations (40 CFR 1506.6).

DATES: Written comments on the application should be received by the Service on or before May 25, 2000. The application, along with any supporting documentation, is available for public review, subject to the requirements of the Privacy Act and Freedom of Information Act, by any party who submits a written request for a copy of such documents within the comment period to the address specified below.

ADDRESSES: Persons wishing to review the application may obtain copies by written request to the U.S. Fish and Wildlife Service, Austin Ecological Service Field Office, 10711 Burnet Road, Suite 200, Austin, Texas 78758 (512/490–0057). The application will also be available for public inspection, by appointment, during normal business hours (8:00 am to 4:30 pm) at the Service's Austin Ecological Services Field Office. During the 30-day public comment period, written comments or data should be submitted to the Field Supervisor at the above address. Please refer to the application for the Texas Hill Country and reference permit number TE–024875–0 when submitting comments. All comments received, including names and addresses, will become a part of the official administrative record and may be made available to the public.

FOR FURTHER INFORMATION CONTACT: Ms. Krishna Costello at the above Austin U.S. Fish and Wildlife Service Field Office.

Background

The black-capped vireo (vireo) and the golden-cheeked warbler (warbler) were listed as endangered in November 1987 and May 1990, respectively. The vireo and warbler are migratory songbirds that occupy breeding habitat in Texas from about March 1–August 31. The vireo requires early successional stage, patchy-island habitat of wooded areas with shrubs up to about 6 feet tall surrounded by grasslands. Warbler habitat is mixed, closed-canopy woodland with mature Ashe juniper and oaks.

Approximately ninety-seven percent of the land in Texas is privately owned, and a large majority of existing and restorable vireo and warbler habitat falls into this category. Therefore, the participation of private landowners in the recovery of these two species is very important.

Landowners having currently unoccupied and/or unsuitable, but restorable, habitat and thus a zero baseline condition for the Safe Harbor, would be eligible for certificates of inclusion. Exceptions to the zero baseline may also be included for certificates under very limited circumstances with concurrence from the Service. Upon completion and maintenance of the habitat improvements for at least four breeding seasons, the landowners would be permitted to conduct any otherwise lawful activity on their property, including activities that result in the partial or total elimination of the restored habitat and the incidental taking of either of these species as a result of such habitat elimination.

SUPPLEMENTARY INFORMATION: Section 9 of the Act prohibits the ''taking'' of endangered species, such as the black-capped vireo and golden-cheeked warbler. However, the Service, under limited circumstances, may issue permits to take endangered wildlife species incidental to, and not the purpose of, otherwise lawful activities. Regulations governing permits for endangered species are at 50 CFR 17.22.

The authority for this action is the Endangered Species Act of 1973, as amended, through its permitting provisions (50 CFR parts 13 & 17).

Geoffrey L. Haskett,

Regional Director, Region 2, Albuquerque, New Mexico.

[FR Doc. 00–9357 Filed 4–24–00; 8:45 am]

BILLING CODE 4510–55–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Availability of an Environmental Action Statement and Receipt of an Application for a Permit to Enhance the Survival of Hawaiian Goose or Nene Through a Safe Harbor Agreement for Reintroduction of the Species to Puu O Hoku Ranch, Molokai

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of availability.

SUMMARY: Puu O Hoku Ranch, Limited has applied to the Fish and Wildlife Service (Service) for an enhancement of a survival permit pursuant to section 10(a)(1)(A) of the Endangered Species Act of 1973, as amended. The permit application includes a Safe Harbor Agreement (Agreement) between the Ranch, the Service, and the Hawaii Department of Land and Natural Resources. The proposed Agreement and permit application are available for public comment.

The proposed Agreement allows for reintroduction and management of the endangered Hawaiian goose or nene (*Branta sandvicensis*) onto private land owned and managed by the Ranch on the island of Molokai. Nene historically occurred on Molokai, but do not currently exist in the wild on the island.

The proposed duration of the proposed Agreement is 7 years.

The proposed permit would allow the Ranch to return to existing baseline conditions of zero nene; however, we anticipate that any nene taken would not be injured or harmed, but would be relocated to other suitable lands. We expect this proposed Agreement to result in a net conservation benefit by establishing a self-sustaining population of nene on Molokai.

The Service has made a preliminary determination that the proposed Agreement and permit application are eligible for categorical exclusion under the National Environmental Policy Act of 1969. We explain the basis for this determination in an Environmental Action Statement, which also is available for public review.

We request comments from the public on the permit application, proposed Agreement, and an Environmental Action Statement. All comments we receive, including names and addresses, will become part of the administrative record and may be released to the public.

DATES: Written comments should be received on or before May 25, 2000.

ADDRESSES: Comments should be addressed to Mr. Paul Henson, Field Supervisor, U.S. Fish and Wildlife Service, P.O. Box 50088, Honolulu, Hawaii 96850, facsimile (808) 541–3470.

FOR FURTHER INFORMATION CONTACT: Mr. Paul Henson at the above address or telephone 808–541–3470.

SUPPLEMENTARY INFORMATION:

Document Availability

You may obtain copies of the documents for review by contacting the office named above. You also may make an appointment to view the documents at the above address during normal business hours.

Background

Under a Safe Harbor Agreement, participating property owners voluntarily undertake management activities on their property to enhance, restore, or maintain habitat benefitting species listed under the Endangered Species Act. Safe Harbor Agreements encourage private and other non-Federal property owners to implement conservation efforts for listed species by assuring property owners they will not be subjected to increased property use restrictions if their efforts attract listed species to their property or increase the numbers or distribution of listed species already on their property. Application requirements and issuance criteria for enhancement of survival permits through Safe Harbor Agreements are found in 50 CFR 17.22(c).

We have worked with Puu O Hoku Ranch and the Hawaii Department of Land and Natural Resources to develop the proposed Agreement for the reintroduction and management of the endangered Hawaiian goose or nene onto Cape Halawa at Puu O Hoku Ranch, Molokai. Prime habitat conditions for nene currently exist on more than 700 acres of Puu O Hoku Ranch. Under the proposed Agreement, the Ranch will: (1) Maintain or improve significant amounts of nene habitat by continuing cattle ranching operations that are compatible with maintenance of open, short grass habitat; (2) assist the Hawaii Department of Land and Natural Resources to establish and maintain release sites; (3) assist the Department to control predators at breeding and release sites; and (4) prohibit hunting in nene breeding areas.

We anticipate that this proposed Agreement will result in the following benefits: (1) Establishment of a new population of nene in a remote area of Molokai, within their historic range, where they do not currently exist; (2) reduced risk of catastrophic loss of nene due to their increased range in the wild; (3) increased genetic diversity of nene; (4) increased number of nene in the wild (anticipated 75 individuals on the ranch and 200 individuals island-wide); (5) greater understanding of the effectiveness of management techniques for nene; (6) and additional sources of nene for future management activities.

Consistent with Safe Harbor policy, we propose to issue a permit to Puu O Hoku Ranch authorizing incidental take of all nene introduced to the enrolled lands, and their progeny, as a result of lawful activities at the Ranch. These activities include unintentional incidental take of nene from: (1) Cattle ranching; (2) eco-tourism; (3) recreational hunting of game birds on the ranch outside of Cape Halawa; and (4) cultivation of agricultural crops. We expect that the maximum level of incidental take authorized under the proposed Agreement will never be realized. The Ranch has no plans to change land uses. Further, we anticipate that any nene taken when the proposed Agreement expires will not be injured or harmed, but will be relocated, with permission from landowners, to other suitable lands. We fully expect that the release of nene on Puu O Hoku Ranch will result in the establishment of a self-sustaining, permanent population of nene on Molokai. Therefore, the cumulative impact of the proposed Agreement and the activities it covers, which are facilitated by the allowable incidental take, will provide a net conservation benefit to the nene.

We provide this notice pursuant to section 10(c) of the Endangered Species Act and pursuant to implementing regulations for the National Environmental Policy Act (40 CFR 1506.6). We will evaluate the permit application, associated documents, and comments submitted thereon to determine whether the permit application meets the requirements of section 10(a) of the Endangered Species Act and National Environmental Policy Act regulations. If we determine that the requirements are met, we will sign the proposed Agreement and issue an enhancement of survival permit under section 10(a)(1)(A) of the Endangered Species Act to Puu O Hoku Ranch for take of nene incidental to otherwise lawful activities in accordance with the terms of the Agreement. We will not make our final decision until after the end of the 30-day comment period and will fully consider all comments received during the comment period.

Dated: April 19, 2000.

Richard A. Coleman,

Deputy Regional Director, Fish and Wildlife Service, Portland, Oregon.

[FR Doc. 00–10239 Filed 4–24–00; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Issuance of Permit for Marine Mammals

On, January 6, 2000 a notice was published in the **Federal Register,** Vol. 65, No. 4, Page 787, that an application had been filed with the Fish and Wildlife Service by Toledo Zoological Gardens, Toledo, OH, for a permit (PRT–014704) to import one captive born polar bear (*Ursus maritimus*) for the purpose of public display.

Notice is hereby given that on March 16, 2000, as authorized by the provisions of the Marine Mammal Protection Act of 1972, *as amended* (16 U.S.C. 1361 *et seq.*) the Fish and Wildlife Service authorized the requested permit subject to certain conditions set forth therein.

Dated: April 20, 2000.

Kristen Nelson,

Chief, Branch of Permits, Office of Management Authority.

[FR Doc. 00–10279 Filed 4–24–00; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[MT–060–00–1220–XQ–003E]

Central Montana Resource Advisory Council Meeting

AGENCY: Bureau of Land Management, Lewistown Field Office.

ACTION: Notice of Meeting.

SUMMARY: The Bureau of Land Management's Central Montana Resource Advisory Council will meet May 17 and 18, 2000, in Malta, Montana.

The May 17 meeting will begin at 1 p.m. with a 30-minute public comment period. Then the council will move into house keeping duties; introductions; election of officers for the coming year; a discussion of the Secretary's response to the council's recommendations for future management in the Missouri River Breaks; an update on the Missouri River subgroup; and discussions about the Land and Water Conservation Fund, the drought policy, and the Zortman/Landusky project. The meeting will adjourn at 5:30 p.m.

The May 18 meeting will begin at 7:45 a.m. The council will discuss the five year budget requests for the Upper Missouri National Wild and Scenic River; the withdrawal of Bureau of Reclamation lands; hear an update for the off-highway vehicle project; discuss direction for the Missouri River subgroup; and discuss topics at large. The council will break for lunch at 11:30 a.m.; take care of administrative duties after lunch; and will adjourn at 2 p.m.

DATES: May 17 and 18, 2000.

LOCATION: The meetings will be held in the basement meeting room of the GN Motel in Malta, Montana.

FOR FURTHER INFORMATION CONTACT: Lewistown Field Manager, Lewistown Field Office, Bureau of Land Management, P.O. Box 1160, Airport Road, Lewistown, MT 59457.

SUPPLEMENTARY INFORMATION: Resource Advisory Council meetings are open to the public and there will be a public comment period as detailed above.

Dated: April 13, 2000.

David L. Mari,

Field Manager.

[FR Doc. 00–10267 Filed 4–24–00; 8:45 am]

BILLING CODE 4310–$$–P

DEPARTMENT OF JUSTICE

Office of Community Oriented Policing Services; Agency Information Collection Activities: Proposed Collection; Comment Request

ACTION: Notice of Information Collection For Review; New Collection Grants Management System Online Application.

The Department of Justice, Office of Justice Programs, has submitted the following information collection request to the Office of Management and Budget (OMB) for review and clearance in accordance with emergency review procedures of the Paperwork Reduction Act of 1995. OMB approval has been requested by May 5, 2000. The proposed information collection is published to obtain comments from the public and affected agencies. If granted, the emergency approval is only valid for 180 days. Comments should be directed to OMB, Office of Information Regulation Affairs, (202) 395–7860, Department of Justice Desk Officer, Washington, DC 20530.

During the first 60 days of this same review period, a regular review of this information collection is also being undertaken. All comments and suggestions, or questions regarding additional information, to include obtaining a copy of the proposed information collection instrument with instructions, should be directed to H. Lionel Cares Jr., Information Resources Management Division, Office of Justice Programs, 810 7th Street NW, RM #B112, Washington DC 20531, or facsimile at (202) 354–4146.

Request written comments and suggestions from the public and affected agencies concerning the proposed collection of information. Your comments should address one or more of the following four points:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses.

Overview of This Information

(1) *Type of Information Collection:* New Collection.

(2) *Title of the Form/Collection:* Grants Management System Online Application.

(3) *Agency form number, if any, and the applicable component of the Department sponsoring the collection:* None. Office of Justice Programs, United States Department of Justice.

(4) *Affected public who will be as or required to respond, as well as a brief abstract:* Primary: State Government. Other: None. The Grants Management System Online Application will be used by respondents from State and Local Government offices to request grants from Offices and Bureaus within the Office of Justice Programs. This information, once collected from grantees, will be used to approve applications for funding, that grantees have requested, for grantee use within State and Local Government offices.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond/reply:* The time burden of the 3,000 respondents to complete the surveys is 4 hours per application.

(6) *An estimate of the total public burden (in hours) associated with the collection:* The total annual hour burden to complete applications for the Grants Management System Online Application is 12,000 annual burden hours.

If additional information is required contact: Ms. Brenda E. Dyer, Deputy, Clearance Office, United States Department of Justice, Information Management and Security Staff Justice Management Division, Suite 1220, National Place Building, 1331 Pennsylvania Avenue, NW, Washington, DC 20530.

Dated: April 20, 2000.

Brenda E. Dyer,

Department Deputy Clearance Officer, United States Department of Justice.

[FR Doc. 00–10305 Filed 4–24–00; 8:45 am]

BILLING CODE 4410–18–M

DEPARTMENT OF JUSTICE

Notice of Lodging of Consent Decree Pursuant to the Comprehensive Environmental Response, Compensation and Liability Act

In accordance with Department of Justice policy codified at 28 CFR 50.7

and Section 122 of CERCLA, 42 U.S.C. 9622, notice is hereby given that on April 11, 2000, a proposed Consent Decree in *United States* v. *SC Holding, et al.,* Civ. Action No. 1:00CV150, was lodged with the United States District Court for the Northern District of Indiana. This Consent Decree represents a settlement of claims of the United States and the State of Indiana, on behalf of federal and State natural resource trustees, under Section 107(a) of CERCLA, 42 U.S.C. 9607(a), against SC Holdings and eight-six (86) other potentially responsible parties for natural resource damages resulting from the release of hazardous substances at or from the Fort Wayne Reduction Superfund Site located in Fort Wayne, Allen County, Indiana. Under this Consent Decree, the Settling Defendants, which include two site owners and seventeen generators of hazardous substances, will implement a restoration plan under which they will, among other things, acquire approximately 75 acres of land adjacent to the Maumee River (''Property''), reforest and restore approximately 45 acres of the Property, place a deed restriction (in the form of a conservation easement) on the Property and convey the Property to the Indiana Department of Natural Resources. The Settling Defendants will reimburse the federal natural resource trustee, the United States Department of Interior, through the United States Fish and Wildlife Service, $90,000 in estimated natural resource damage assessment costs and $8,000 in estimated project oversight costs. The Settling Defendants will also reimburse the State natural resource damage trustee, the State of Indiana, through the Indiana Department of Environmental Management and the Indiana Department of Natural Resources, $2,000 and $1,500 respectively, for their natural resource damage assessment costs and estimated project oversight costs. Finally, sixty-eight (68) parties who contributed small amounts of hazardous substances to the Site and who previously settled their natural resource damage liability with the Settling Defendants will receive a covenant not to sue from the United States and the State of Indiana for natural resource damages resulting from releases of hazardous substances at or from the Site.

The Department of Justice will receive for a period of thirty (30) days from the date of this publication comments relating to the proposed Consent Decree. Comments should be addressed to the Assistant Attorney General of the Environment and Natural Resources Division, Department of Justice, 950 Pennsylvania Avenue, NW, Washington, DC 20530, and should refer to *United States* v. *SC Holdings et al.,* Civ. Action No. 1:00CV150, D.J. Ref. Nos. 90–11–3–1687/2, 90–11–6–05585.

The Consent Decree may be examined at the Office of the United States Attorney, 3128 Federal Building, 1300 South Harrison Street, Fort Wayne, Indiana 46802, and at the United States Fish and Wildlife Service, 620 South Walker Street, Bloomington, Indiana 47403. A copy of the Consent Decree may also be obtained by mail from the Consent Decree Library, P.O. Box 7611, U.S. Department of Justice, Washington, DC 20044–7611. In requesting a copy of the Consent Decree, please enclose a check in amount of $22.50 (90 pages at 25 cents per page reproduction cost) payable to the Consent Decree Library.

Joel M. Gross,

Chief, Environmental Enforcenent Section, Environment & Natural Resources Division.

[FR Doc. 00–10230 Filed 4–24–00; 8:45 am]

BILLING CODE 4410–15–M

DEPARTMENT OF JUSTICE

Notice of Lodging of Consent Decree Under the Clean Air Act, Comprehensive Environmental Response, Compensation, and Liability Act, Emergency Planning and Community Right-To-Know Act, and the Federal Water Pollution Control Act

In accordance with Departmental policy, 28 CFR 50.7, notice is hereby given that a proposed consent decree in the case of *United States* v. *BHP Petroleum Americas Refining, Inc., now known as Tesoro Hawaii Corporation*, Civil Action No. 00–00264 DAE (D. Hawaii), was lodged with the United States District Court for the District of Hawaii on April 10, 2000.

The proposed consent decree resolves claims that the United States asserted against Tesoro Hawaii Corporation (Tesoro) in a civil complaint filed concurrently with the lodging of the consent decree. The complaint alleges that Tesoro failed to comply with New Source Performance Standards under the Clean Air Act, including requirements to: provide notice of startup; maintain facilities consistent with good air quality practice; meet limits on hydrogen sulfide in fuel gas; comply with a leak detection and repair program for equipment in volatile organic compound service; and comply with work practice standards for the refinery's wastewater system. In addition, the complaint alleges that Tesoro failed to comply with National Emission Standards for Hazardous Air Pollutants under the Clean Air Act, including requirements to provide notice of construction startup and to comply with a leak detection and repair program for benzene sources. The complaint also alleges that Tesoro failed on several days to properly notify the National Response Center, the State Emergency Response Commission, and the Local Emergency Planning Committee of the releases of hazardous substances from the refinery as required by section 103 of the Comprehensive Environmental Response, Compensation, and Liability Act and section 304 of the Emergency Planning and Community Right-to-Know Act. Finally, the complaint alleges that Tesoro failed to prepare and implement a Spill Prevention Control and Countermeasure Plan and failed to revise and implement a Facility Response Plan, as required by regulations issued pursuant to section 311 of the Federal Water Pollution Control Act.

The proposed consent decree requires defendant to pay a civil penalty of $681,780. In addition, defendant is required to modify the air blower and burner systems at the refinery's sulfur recovery units to avoid unplanned shutdowns of the units, which leads to excess sulfur dioxide air emissions from the refinery. In addition, Tesoro is required to add capacity to its containment areas and to place new coatings on its berms and containment floors to contain spilled oil and to prevent an oil spill to waters of the United States. Tesoro also agreed to undertake a supplemental environmental project to provide equipment worth $50,000 to the City and County of Honolulu for management of inventory data and emergency planning.

The Department of Justice will accept comments relating to this consent decree for a period of thirty (30) days from the date of this publication. Address your comments to the Assistant Attorney General for the Environment and Natural Resources Division, Department of Justice, Washington, DC 20530, and send a copy to the Environmental Enforcement Section, Attn: Robert Mullaney, U.S. Department of Justice, 301 Howard Street, Suite 870, San Francisco, CA 94105. Your comments should refer to *United States* v. *BHP Petroleum Americas Refining, Inc., now known as Tesoro Hawaii Corporation*, Civil Action No. 00–00264 DAE (D. Hawaii), and DOJ No. 90–5–2–1–2124.

You may examine the proposed consent decree at the office of the

United States Attorney, District of Hawaii, Room 6100, PJKK Federal Building, 300 Ala Moana Boulevard, Honolulu, Hawaii 96850. You may also obtain a copy of the consent decree by mail from the Consent Decree Library, P.O. Box 7611, Washington, DC 20044. Your request for a copy of the consent decree should refer to *United States* v. *BHP Petroleum Americas Refining, Inc., now known as Tesoro Hawaii Corporation*, Civil Action No. 00–00264 DAE (D. Hawaii), and DOJ No. 90–5–2–1–2124, and must include a check for $14.00 (25 cents per page reproduction cost) payable to the ''Consent Decree Library.''

Joel Gross,

Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 00–10229 Filed 4–24–00; 8:45 am]

BILLING CODE 4410–15–M

DEPARTMENT OF JUSTICE

Antitrust Division

[Civil Action No. 95–1221 (CRR)]

United States District Court for the District of Columbia, United States of America, Plaintiff, vs. American Bar Association, Defendant

Take notice that The United States of America and the American Bar Association (''ABA'') have filed a joint motion for an order modifying the final judgment entered by the United States District Court for the District of Columbia on June 25, 1996 (''Final Judgment''). The parties have agreed to modify the Final Judgment to reflect changes in the law school accreditation process necessitated by regulations promulgated by the Department of Education (''DOE'') pursuant to the Higher Education Act, 20 U.S.C. 1099(b) (1998). Prior to the entry of the order modifying the Final Judgment, the Court and the parties will consider public comments. Any such comments on the proposed modification described in this Notice must be filed within 60 days following the date of this Notice. The Complaint, Final Judgment and proposed modification are further described below.

The Complaint, filed on June 27, 1995, alleged that the ABA had violated Section 1 of the Sherman Act in its law school accreditation activities. The Complaint alleged that the ABA had restrained competition among professional personnel at ABA-approved law schools by fixing their salaries and other compensation levels and working conditions, and by limiting competition from non-ABA-Approved schools. The ABA and United States agreed to a settlement, and on June 25, 1996, the Court entered the Final Judgment, enjoining the ABA from fixing compensation and from enforcing a boycott of non-ABA approved schools. Moreover, because the Complaint alleged that the ABA had allowed the accreditation process to be misused by law school personnel with a direct economic interest in its outcome, the Final Judgment ordered the BA to take a number of steps to limit the influence of law school personnel in the accreditation process, including having the ABA's House of Delegates review and approve certain aspects of the accreditation process.

After the Final Judgment was entered, DOE determined that allowing the House of Delegates to act as the final decision-maker for accreditation activities did not conform to provisions of the Higher Education Act and DOE regulations. Consequently, the ABA, in order to retain its status as a DOE-recognized accreditation agency, has modified the House's role, and the parties to the Final Judgment have agreed that the Court should make appropriate modifications to the Final Judgment so that it conforms to the DOE requirements.

Under the joint proposal, Sections IV(A) and VIII(D) of the Final Judgment will be modified and a new Section IV(M) will be added. As modified, the Judgment will be consistent with DOE's rules which prevent the House of Delegates from being the final decision-maker in establishing the standards, interpretations, and rules used to evaluate law schools or in determining whether a school receives or maintains its accreditation. Consistent with DOE requirements, the House of Delegates will maintain a role in reviewing standards, interpretations, and rules and in reviewing accreditation decisions and can remand such actions to the Council of the ABA's Section on Legal Education and Admissions to the Bar, the DOE-recognized accrediting agency.

The United States has filed with the Court a memorandum setting forth its position with respect to modifying the Final Judgment. Copies of the Complaint, the Final Judgment, the Modification to the Final Judgment, the Stipulation containing the parties' tentative consent, the Joint Motion, the United States' memorandum and all other papers filed in connection with this motion are available for inspection at the Office of the Clerk of the United States District Court for the District of Columbia, 333 Constitution Avenue, NW, Washington, DC 20001, and at Suite 215, Antitrust Division, Department of Justice, 325 Seventh Street, NW, Washington, DC 20530, (Telephone: (202) 514–2481).

Interested persons may submit comments regarding this matter within sixty (60) days of the date of this notice. Such comments, and responses thereto, will be filed with the Court. Comments should be directed to Nancy M. Goodman, Chief, Computers and Finance Section, Room 9500, 600 E Street, NW, Antitrust Division, Department of Justice, Washington, DC 20530, (telephone: (202) 307–6122)

M.J. Moltenbrey,

Director of Civil Non-Merger Enforcement.

[FR Doc. 00–10231 Filed 4–24–00; 8:45 am]

BILLING CODE 4410–11–M

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Importation of Controlled Substances; Notice of Application

Pursuant to Section 1008 of the Controlled Substances Import and Export Act (21 U.S.C. 958(i)), the Attorney General shall, prior to issuing a registration under this Section to a bulk manufacturer of a controlled substance in Schedule I or II and prior to issuing a regulation under Section 1002(a) authorizing the importation of such a substance, provide manufacturers holding registrations for the bulk manufacture of the substance an opportunity for a hearing.

Therefore, in accordance with Section 1301.34 of Title 21, Code of Federal Regulations (CFR), notice is hereby given that on January 31, 2000, Mallinckrodt, Inc., Mallinckrodt & Second Streets, St. Louis, Missouri 63147, made application by renewal to the Drug Enforcement Administration to be registered as an importer of the basic classes of controlled substances listed below:

Drug	Schedule
Phenylacetone (8501)	II
Coca Leaves (9040)	II
Opium, raw (9600)	II
Opium poppy (9650)	II
Poppy Straw Concentrate (9670)	II

The firm plans to import the listed controlled substances to bulk manufacture controlled substances.

Any manufacturer holding, or applying for, registration as a bulk manufacturer of these basic classes of controlled substances may file written comments on or objections to the

application described above and may, at the same time, file a written request for a hearing on such application in accordance with 21 CFR 1301.43 in such form as prescribed by 21 CFR 1316.47.

Any such comments, objections or requests for a hearing may be addressed, in quintuplicate, to the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration, United States Department of Justice, Washington, DC 20537. Attention: DEA Federal Register Representative (CCR), and must be filed no later than (30 days from publication).

This procedure is to be conducted simultaneously with and independent of the procedures described in 21 CFR 1301.34(b), (c), (d), (e), and (f). As noted in a previous notice at 40 FR 4374–46 (September 23, 1975), all applicants for registration to import the basic classes of any controlled substances in Schedule I or II are and will continue to be required to demonstrate to the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration that the requirements for such registration pursuant to 21 U.S.C. 958(a), 21 U.S.C. 823(a), and 21 CFR 1301.34(a), (b), (c), (d), (e), and (f) are satisfied.

Dated: April 18, 2000.

John H. King,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. 00–10206 Filed 4–24–00; 8:45 am]

BILLING CODE 4410–09–M

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Manufacturer of Controlled Substances; Notice of Registration

By Notice dated December 13, 1999, and published in the **Federal Register** on December 28, 1999, (64 FR 248), Polaroid Corporation, 1265 Main Street, Building W6, Waltham, Massachusetts 02451, made application to the Drug Enforcement Administration (DEA) to be registered as a bulk manufacturer of 2,5-dimethoxyamphetamine (7396), a basic class of controlled substance listed in Schedule I.

The firm plans to manufacture 2,5-dimethoxyamphetamine for conversion into a non-controlled substance.

No comments or objections have been received. DEA has considered the factors in title 21, United States Code, section 823(a) and determined that the registration of Polaroid Corporation to manufacture 2,5-dimethoxyamphetamine is consistent with the public interest at this time. DEA has investigated Polaroid Corporation to ensure that the company's registration is consistent with the public interest. The investigation included inspection and testing of the company's physical security systems, verification of the company's compliance with State and local laws, and a review of the company's background and history. Therefore, pursuant to 21 U.S.C. 823 and 28 CFR. 0.100 and 0.104, the Deputy Assistant Administrator, Office of Diversion Control, hereby orders that the application submitted by the above firm for registration as a bulk manufacturer of the basic class of controlled substance listed above is granted.

Dated: April 6, 2000.

John H. King,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. 00–10210 Filed 4–24–00; 8:45 am]

BILLING CODE 4410–09–M

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Importation of Controlled Substances; Notice of Application

Pursuant to section 1008 of the Controlled Substances Import and Export Act (21 U.S.C. 958(i)), the Attorney General shall, prior to issuing a registration under this section to a bulk manufacturer of a controlled substance in Schedule I or II and prior to issuing a regulation under section 1002(a) authorizing the importation of such a substance, provide manufacturers holding registrations for the bulk manufacture of the substance an opportunity for a hearing.

Therefore, in accordance with section 1301.34 of title 21, Code of Federal Regulations (CFR), notice is hereby given that on January 24, 2000, Roche Diagnostics Corporation, 9115 Hague Road, Indianapolis, Indiana 46250, made application to the Drug Enforcement Administration to be registered as an importer of the basic classes of controlled substances listed below:

Drug	Schedule
Lysergic acid diethylamide (7315)	I
Tetrahydrocannabinols (7370)	I
Cocaine (9041)	II
Methadone (9250)	II
Morphine (9300)	II

The firm plans to import the listed controlled substances for the manufacture of diagnostic products.

Any manufacturer holding, or applying for, registration as a bulk manufacturer of these basic classes of controlled substances may file written comments on or objections to the application described above and may, at the same time, file a written request for a hearing on such application in accordance with 21 CFR 1301.43 in such form as prescribed by 21 CFR 1316.47.

Any such comments, objections or requests for a hearing may be addressed, in quintuplicate, to the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration, United States Department of Justice, Washington, DC 20537, Attention: DEA Federal Register Representative (CCR), and must be filed no later than May 25, 2000.

This procedure is to be conducted simultaneously with and independent of the procedures described in 21 CFR 1301.34(b), (c), (d), (e), and (f). As noted in a previous notice at 40 FR 43745–46 (September 23, 1975), all applicants for registration to import the basic classes of any controlled substances in Schedule I or II are and will continue to be required to demonstrate to the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration that the requirements for such registration pursuant to 21 U.S.C. 958(a), 21 U.S.C. 823(a), and 21 CFR 1301.34(a), (b), (c), (d), (e), and (f) are satisfied.

Dated: April 6, 2000.

John H. King,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. 00–10207 Filed 4–24–00; 8:45 am]

BILLING CODE 4410–09–M

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Manufacturer of Controlled Substances; Notice of Application

Pursuant to section 1301.33(a) of title 21 of the Code of Federal Regulations (CFR), this is notice that on January 24, 2000, Roche Diagnostics Corporation, 9115 Hague Road, Indianapolis, Indiana 46250, made application by renewal to the Drug Enforcement Adminsitraiton (DEA) for registration as a bulk manufacturer of the basic classes of controlled substances listed below:

Drug	Schedule
Lysergic acid diethylamide (7315)	I
Tetrahydrocannabinols (7370)	I
Phencyclidine (7471)	II
Benzoylecogonine (9180)	II
Methadone (9250)	II
Morphine (9300)	II

Roche Diagnostics Corporation plans to manufacture small quantities of the above listed controlled substances for incorporation in drug of abuse detection kits.

Any other such applicant and any person who is presently registered with DEA to manufacture such substance may file comments or objections to the issuance of the proposed registration.

Any such comments or objections may be addressed, in quintuplicate, to the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration, United States Department of Justice, Washington, DC 20537, Attention: DEA Federal Register Representative (CCR), and must be filed no later than June 26, 2000.

Dated: April 6, 2000.

John H. King,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. 00–10208 Filed 4–24–00; 8:45 am]

BILLING CODE 4410–09–M

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Manufacturer of Controlled Substances; Notice of Application

Pursuant to section 1301.33(a) of title 21 of the Code of Federal Regulations (CFR), this is notice that on February 3, 2000, Stepan Company Natural Products Department, 100 W. Hunter Avenue, Maywood, New Jersey 07607, made application by renewal to the Drug Enforcement Administration (DEA) for registration as a bulk manufacturer of the basic classes of controlled substances listed below:

Drug	Schedule
Cocaine (9041)	II
Benzoylecgonine (9180)	II

The firm plans to manufacture bulk controlled substances for distribution to its customers.

Any other such applicant and any person who is presently registered with DEA to manufacture such substances may file comments or objections to the issuance of the proposed registration.

Any such comments or objections may be addressed, in quintuplicate, to the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration, United States Department of Justice, Washington, DC 20537, Attention: DEA Federal Register Representative (CCR), and must be filed no later than June 26, 2000.

Dated: April 6, 2000.

John H. King,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. 00–10209 Filed 4–24–00; 8:45 am]

BILLING CODE 4410–09–M

DEPARTMENT OF JUSTICE

Immigration and Naturalization

Agency Information Collection Activities: Proposed Collection; Comment Request

ACTION: Notice of Information Collection Under Review: Application for Advance Permission to Return to Unrelinquished Domicile.

The Department of Justice, Immigration and Naturalization (INS) has submitted the following information collection request to the Office of Management and Budget (OMB) for review and clearance in accordance with the Paperwork Reduction Act of 1995. The information collection was previously published in the **Federal Register** on February 22, 2000 at 65 FR 8740, allowing for a 60-day public comment period. No comments were received by the INS on this proposed information collection.

The purpose of this notice is to allow an additional 30 days for public comments. Comments are encouraged and will be accepted until May 25, 2000. This process is conducted in accordance with 5 CFR 1320.10.

Written comments and/or suggestions regarding the items contained in this notice, especially regarding the estimated public burden and associated response time, should be directed to the Office of Management and Budget, Office of Information and Regulatory Affairs, Attention: Stuart Shapiro, Department of Justice Desk Officer, Room 10235, Washington, DC 20530; 202–395–7316.

Written comments and suggestions from the public and affected agencies concerning the proposed collection of information should address one or more of the following four points:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses.

Overview of this information collection:

(1) *Type of Information Collection:* Extension of a currently approved collection.

(2) *Title of the Form/Collection:* Application for Advance Permission to Return to Unrelinquished Domicile.

(3) *Agency form number, if any, and the applicable component of the Department of Justice sponsoring the collection:* Form I–191, Adjudications Division, Immigration and Naturalization Service.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract:* Primary: Individuals or Households. The information collected on this form will be used by the Immigration and Naturalization Service to determine whether the applicant is eligible for discretionary relief under section 212(c) of the Act.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* 300 responses at 15 minutes (.25 hours) per response.

(6) *An estimate of the total public burden (in hours) associated with the collection:* 75 annual burden hours.

If you have additional comments, suggestions, or need a copy of the proposed information collection instrument with instructions, or additional information, please contact Richard A. Sloan 292–514–3291, Director, Policy Directives and Instructions Branch, Immigration and Naturalization Service, U.S. Department of Justice, Room 5307, 425 I Street, NW., Washington, DC 20536. Additionally, comments and/or suggestions regarding the item(s) contained in this notice, especially regarding the estimated public burden and associated response

time may also be directed to Mr. Richard A. Sloan.

If additional information is required contact: Mr. Robert B. Briggs, Clearance Officer, United States Department of Justice, Information Management and Security Staff, Justice Management Division, Suite 850, Washington Center, 1001 G Street, NW, Washington, DC 20530.

Dated: April 20, 2000.

Richard A. Sloan,

Department Clearance Officer, United States Department of Justice, Immigration and Naturalization Service.

[FR Doc. 00–10241 Filed 4–24–00; 8:45 am]

BILLING CODE 4410–10–M

DEPARTMENT OF JUSTICE

Immigration and Naturalization Service

Agency Information Collection Activities: Proposed Collection; Comment Request

ACTION: Notice of information collection under review: Application for waiver of ground of excludability.

The Department of Justice, Immigration and Naturalization Service (INS) has submitted the following information collection request to the Office of Management and Budget (OMB) for review and clearance in accordance with the Paperwork Reduction Act of 1995. The information collection was previously published in the **Federal Register** on February 22, 2000 at 65 FR 8739, allowing for a 60-day public comment period. No comments were received by the INS on this proposed information collection.

The purpose of this notice is to allow an additional 30 days for public comments. Comments are encouraged and will be accepted until May 25, 2000. This process is conducted in accordance with 5 CFR 1320.10.

Written comments and/or suggestions regarding the items contained in this notice, especially regarding the estimated public burden and associated response time, should be directed to the Office of Management and Budget, Office of Information and Regulatory Affairs, Attention: Stuart Shapiro, Department of Justice Desk Officer, Room 10235, Washington, DC 20530; 202–395–7316.

Written comments and suggestions from the public and affected agencies concerning the proposed collection of information should address one or more of the following four points:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses.

Overview of this information collection:

(1) Type of Information Collection: Extension of a currently approved collection.

(2) Title of the Form/Collection: Application for Waiver of Ground of Excludability.

(3) Agency form number, if any, and the applicable component of the Department of Justice sponsoring the collection: Form I–601, Adjudications Division, Immigration and Naturalization Service.

(4) Affected public who will be asked or required to respond, as well as a brief abstract: Primary: Individuals or Households. The information collected on this form will be used by the Immigration and Naturalization Service to determine whether the applicant is eligible for a waiver of excludability under section 212 of the Immigration and Nationality Act.

(5) An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond: 3,000 responses at 30 minutes (.50 hours) per response.

(6) An estimate of the total public burden (in hours) associated with the collection: 1,500 annual burden hours.

If you have additional comments, suggestions, or need a copy of the proposed information collection instrument with instructions, or additional information, please contact Richard A. Sloan 202–514–3291, Director, Policy Directives and Instructions Branch, Immigration and Naturalization Service, U.S. Department of Justice, Room 5307, 425 I Street, NW., Washington, DC 20536. Additionally comments and/or suggestions regarding the item(s) contained in this notice, especially regarding the estimated public burden and associated response time may also be directed to Mr. Richard A. Sloan.

If additional information is required contact: Mr. Robert B. Briggs, Clearance Officer, United States Department of Justice, Information Management and Security Staff, Justice Management Division, Suite 850, Washington Center, 1001 G Street, NW, Washington, DC 20530.

Dated: April 20, 2000.

Richard A. Sloan,

Department Clearance Officer, United States Department of Justice, Immigration and Naturalization Service.

[FR Doc. 00–10242 Filed 4–24–00; 8:45 am]

BILLING CODE 4410–10–M

NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

Meetings of Humanities Panel

AGENCY: The National Endowment for the Humanities.

ACTION: Notice of meetings.

SUMMARY: Pursuant to the provisions of the Federal Advisory Committee Act (Public Law 92–463, as amended), notice is hereby given that the following meetings of the Humanities Panel will be held at the Old Post Office, 1100 Pennsylvania Avenue, NW, Washington, DC 20506.

FOR FURTHER INFORMATION CONTACT: Laura S. Nelson, Advisory Committee Management Officer, National Endowment for the Humanities, Washington, DC 20506; telephone (202) 606–8322. Hearing-impaired individuals are advised that information on this matter may be obtained by contacting the Endowment's TDD terminal on (202) 606–8282.

SUPPLEMENTARY INFORMATION: The proposed meetings are for the purpose of panel review, discussion, evaluation and recommendation on applications for financial assistance under the National Foundation on the Arts and the Humanities Act of 1965, as amended, including discussion of information given in confidence to the agency by the grant applicants. Because the proposed meeting will consider information that is likely to disclose trade secrets and commercial or financial information obtained from a person and privileged or confidential and/or information of a personal nature the disclosure of which would constitute a clearly unwarranted invasion of personal privacy, pursuant to authority granted me by the Chairman's Delegation of Authority to Close Advisory Committee meetings, dated July 19, 1993, I have determined

that these meetings will be closed to the public pursuant to subsections (c) (4), and (6) of section 552b of Title 5, United States Code.

1. *Date:* May 25, 2000.
Time: 9:00 a.m. to 5:00 p.m.
Room: 315.
Program: This meeting will review applications for Extending the Reach Faculty Research Grants in Faculty Research Grants, submitted to the Division of Research Programs at the April 10, 2000 deadline.

Laura S. Nelson,

Advisory Committee Management Officer.

[FR Doc. 00–10228 Filed 4–24–00; 8:45 am]

BILLING CODE 7536–01–M

NATIONAL TRANSPORTATION SAFETY BOARD

Sunshine Act Meeting

AGENCY HOLDING THE MEETING: National Transportation Safety Board.

TIME AND DATE: 9:30 a.m., Wednesday, May 3, 2000.

PLACE: NTSB Board Room, 429 L'Enfant Plaza, SW, Washington, DC 20594.

STATUS: Open to the public.

MATTERS TO BE CONSIDERED:

5299F ''Most Wanted'' Safety Recommendation Program Status Report and Suggested Modifications.

7256 Special Investigation Report: Actions to Reduce Fatalities, Injuries, and Crashes Involving the Hard Core Drinking Driver.

NEWS MEDIA CONTRACT: Telephone: (202) 314–6100.

Individuals requesting specific accommodation should contact Mrs. Barbara Bush at (202) 314–6220 by Friday April 28, 2000.

CONTRACT PERSON FOR MORE INFORMATION: Rhonda Underwood (202) 314–6065.

April 21, 2000.

Rhonda Underwood,

Federal Register Liaison Officer.

[FR Doc. 00–10441 Filed 4–21–00; 3:38 pm]

BILLING CODE 7533–01–M

NUCLEAR REGULATORY COMMISSION

Agency Information Collection Activities: Proposed Collection: Comment Request

AGENCY: U.S. Nuclear Regulatory Commission (NRC).

ACTION: Notice of the pending NRC action to submit an information collection request to OMB and solicitation of public comment.

SUMMARY: The NRC is preparing a submittal to OMB for review of continued approval of Information collections under the provisions of the Paperwork Reduction Act 1995 (44 U.S.C. Chapter 35).

Information pertaining to the requirement to be submitted:

1. *The title of the information collection:* Applicant Self-Assessment Form.

2. *Current OMB approval number:* NRC Form 563.

3. *How often is the collection required:* On-going.

4. *Who will be required or asked to report:* Basically qualified external applicants applying for engineering and scientific positions with the NRC.

5. *The number of annual respondents:* 1,200.

6. *The number of hours needed annually to complete the requirement or request:* 100 hours (five minutes per response).

7. *Abstract:* The Applicant Self-Assessment will be used to collect uniform information from external applicants as to which technical specialties they possess that are unique to the needs of the NRC. This information will be reviewed by Office of Human Resources staff and used to match applicants' technical specialties with those required by selecting officials when an engineering or scientific vacancy position is to be filled.

Submit, by June 26, 2000, comments that address the following questions:

1. Is the proposed collection of information necessary for the NRC to properly perform its functions? Does the information have practical utility?

2. Is the burden estimate accurate?

3. Is there a way to enhance the quality, utility, and clarity of the information to be collected?

4. How can the burden of the information collection be minimized, including the use of automated collection techniques or other forms of information technology?

A copy of the draft supporting statement may be viewed free of charge at the NRC Public Document Room, 2120 L Street, NW. (lower level), Washington, DC. OMB clearance requests are available at the NRC worldwide web site (*http://www.nrc.gov/NRC/PUBLIC/OMB/index.html*). The document will be available on the NRC home page site for 60 days after the signature date of this notice.

Comments and questions about the information collection requirements may be directed to the NRC Clearance Officer, Brenda Jo. Shelton, U.S. Nuclear Regulatory Commission, T–6 E6, Washington, DC 20555–0001, by telephone at 301–415–7233, or by Internet electronic mail at BJS1@NRC.GOV.

For the Nuclear Regulatory Commission.

Dated at Rockville, Maryland, this 19th day of April 2000.

Brenda Jo. Shelton,

NRC Clearance Officer, Office of the Chief Information Officer.

[FR Doc. 00–10295 Filed 4–24–00; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket No. 72–22–ISFSI; ASLBP No. 97–732–02–ISFSI]

Atomic Safety and Licensing Board: Before Administrative Judges: G. Paul Bollwerk, III, Chairman, Dr. Jerry R. Kline, Dr. Peter S. Lam

In the Matter of Private Fuel Storage, L.L.C. (Independent Spent Fuel Storage Installation); *Notice* (Notice of Hearing and of Opportunity to Make Oral or Written Limited Appearance Statements)
April 19, 2000.

The Atomic Safety and Licensing Board hereby gives notice that it will convene an evidentiary hearing to receive testimony and exhibits and allow the cross-examination of witnesses relating to certain matters at issue in this proceeding regarding the June 1997 application of Private Fuel Storage, L.L.C., (PFS) for a license under 10 CFR part 72 to construct and operate an independent spent fuel storage installation (ISFSI) on the reservation of the Skull Valley Band of Goshute Indians (Skull Valley Band) in Skull Valley, Utah. In addition, the Board gives notice that, in accordance with 10 CFR 2.715(a), it will entertain oral limited appearance statements from members of the public in connection with this proceeding.

A. Date, Time, and Location of Evidentiary Hearing

The Board will conduct an evidentiary hearing on certain issues relating to this proceeding, currently scheduled to include contentions Utah E/Confederated Tribes F, Financial Assurance; Utah H, Inadequate Thermal Design; Utah R, Emergency Plan; and Utah S, Decommissioning, beginning at 9:30 a.m., on Monday, June 19, 2000, in the Hilton Salt Lake City, Wasatch Room, Mezzanine Level, 150 West 500 South, Salt Lake City, Utah. The hearing on these issues shall continue from day-to-day until concluded.

The public is advised that, in accordance with 10 CFR 2.790(b)(6), all or part of the sessions regarding contentions Utah E/Confederated Tribes F and Utah S may be closed to the public because the matters at issue may involve the discussion of confidential proprietary information.

B. Date, Time, and Location of Oral Limited Appearance Statement Sessions

The Board will conduct sessions to provide the public with an opportunity to make oral limited appearance statements on the following dates at the specified locations and times:

1. *Date: Friday, June 23, 2000.*
Times: Afternoon Session—1 p.m. to 4 p.m. Mountain Daylight Time (MDT). Evening Session—7 p.m. to 9:30 p.m. MDT.
Location: Hilton Salt Lake City, Wasatch Room—Mezzanine Level, 150 West 500 South, Salt Lake City, Utah.
2. *Date: Saturday, June 24, 2000.*
Times: Afternoon Session (if there is sufficient interest)— 1:00 p.m. to 4:00 p.m. MDT.
Location: Same as Session 1 above
3. *Date: Friday, June 30, 2000.*
Times: Afternoon Session—1:00 p.m. to 4:00 p.m. MDT; Evening Session—7:00 p.m. to 9:30 p.m. MDT.
Location: Tooele High School Auditorium, 240 West Buffalo Blvd., Tooele, Utah
4. *Date: Saturday, July 1, 2000.*
Times: Afternoon Session (if there is sufficient interest)—1:00 p.m. to 4:00 p.m. MDT.
Location: Same as Session 3 above.

C. Participation Guidelines for Oral Limited Appearance Statements

Any person not a party to the proceeding will be permitted to make an oral statement setting forth his or her position on matters of concern relating to this proceeding. Although these statements do not constitute testimony or evidence, they nonetheless may help the Board and/or the parties in their deliberations in connection with the issues to be considered in this proceeding.

Oral limited appearance statements will be entertained during the hours specified above, or such lesser time as may be necessary to accommodate the speakers who are present. If, however, all scheduled and unscheduled speakers present at a session have made a presentation, the Licensing Board reserves the right to terminate the session before the ending time listed above. The Licensing Board also reserves the right to cancel the Saturday sessions scheduled above if there has not been a sufficient showing of public interest as reflected by the number of preregistered speakers.

The time allotted for each statement normally will be no more than five minutes, but may be further limited depending on the number of written requests to make an oral statement that are submitted in accordance with section D below and/or the number of persons present at the designated times.

D. Submitting a Request To Make an Oral Limited Appearance Statement

Persons wishing to make an oral statement who have submitted a timely written request to do so will be given priority over those who have not filed such a request. In order to be considered timely, a written request to make an oral statement must be mailed, faxed, or sent by e-mail so as to be received by close of business (4:30 p.m. EST) on *Wednesday, May 31, 2000.* The request must specify the date (June 23, June 24, June 30, or July 1) and the session on that day (afternoon or evening) during which the requester wishes to make an oral statement. Based on its review of the requests received on May 31, 2000, the Licensing Board may decide that either or both of the Saturday sessions will not be held due to lack of adequate interest in those sessions.

Written requests to make an oral statement should be submitted to:
Mail: Office of the Secretary, Rulemakings and Adjudications Staff, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001
Fax: (301) 415–1101 (verification (301) 415–1966)
E-mail: hearingdocket@nrc.gov

In addition, using the same method of service, a copy of the written request to make an oral statement should be sent to the Chairman of this Licensing Board as follows:
Mail: Administrative Judge G. Paul Bollwerk, III, Atomic Safety and Licensing Board Panel, Mail Stop T–3F23, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001
Fax: (301) 415–5599 (verification (301) 415–7550)
E-mail: gpb@nrc.gov

E. Submitting Written Limited Appearance Statements

As the Board has noted previously, a written limited appearance statement can be submitted at any time. Such statements should be sent to the Office of the Secretary using the methods prescribed above, with a copy to the Licensing Board Chairman.

Documents relating to the PFS license application at issue in this proceeding currently are on file at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW, Washington, DC 20003–1527, and at the University of Utah, Marriott Library, Documents Division, 295 S. 1500 East, Salt Lake City, Utah 84112–0860.

Dated: April 19, 2000, Rockville, Maryland.

For the Atomic Safety and Licensing Board.*

G. Paul Bollwerk, III,

Administrative Judge.

[FR Doc. 00–10292 Filed 4–24–00; 8:45 am]
BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

Draft Regulatory Guide; Issuance, Availability

The Nuclear Regulatory Commission has issued for public comment a draft of a new guide in its Regulatory Guide Series. This series has been developed to describe and make available to the public such information as methods acceptable to the NRC staff for implementing specific parts of the NRC's regulations, techniques used by the staff in evaluating specific problems or postulated accidents, and data needed by the staff in its review of applications for permits and licenses.

The draft guide, temporarily identified by its task number, DG–1095 (which should be mentioned in all correspondence concerning this draft guide), is titled ''Guidance for Implementation of 10 CFR 50.59, 'Changes, Tests and Experiments.' '' This guide is being developed to describe methods acceptable to the NRC staff for complying with the NRC's regulations with regard to the process for evaluating changes, tests, and experiements that a licensee wishes to make without prior NRC approval. A letter has been issued as part of the guide to request public comments on specific questions related to the guidance. This guide proposes to endorse, with some clarifications, a Nuclear Energy Institute document, Revision 1 of NEI 96–07, ''Guidelines for 10 CFR 50.59 Evaluations.''

This draft guide has not received complete staff approval and does not represent an official NRC staff position.

Comments may be accompanied by relevant information or supporting data. Written comments may be submitted to the Rules and Directives Branch, Office

* Copies of this notice were sent this date by Internet e-mail transmission to counsel for (1) applicant PFS; (2) intervenors Skull Valley Band, Ohngo Gaudadeh Devia, Confederated Tribes of the Goshute Reservation, Southern Utah Wilderness Alliance, and the State of Utah; and (3) the NRC staff.

of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555. Copies of comments received may be examined at the NRC Public Document Room, 2120 L Street NW., Washington, DC. Comments will be most helpful if received by June 9, 2000.

You may also provide comments via the NRC's interactive rulemaking website through the NRC home page (http://www.nrc.gov). This site provides the availability to upload comments as files (any format), if your web browser supports that function. For information about the interactive rulemaking website, contact Ms. Carol Gallagher, (301) 415–5905; e-mail *CAG@NRC.GOV.* Electronic copies of this draft guide, under Accession Number ML003698165, are available in NRC's Public Electronic Reading Room, which can also be accessed through NRC's web site, <*WWW.NRC.GOV*>. For information about the draft guide and the related documents, contact Ms. E. McKenna at (301) 415–2189; e-mail EMM@NRC.GOV.

Although a time limit is given for comments on this draft guide, comments and suggestions in connection with items for inclusion in guides currently being developed or improvements in all published guides are encouraged at any time.

Regulatory guides are available for inspection at the Commission's Public Document Room, 2120 L Street NW., Washington, DC. Requests for single copies of draft or final guides (which may be reproduced) or for placement on an automatic distribution list for single copies of future draft guides in specific divisions should be made in writing to the U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Reproduction and Distribution Services Section; or by fax to (301) 415–2289, or by email to <DISTRIBUTION@NRC.GOV>. Telephone requests cannot be accommodated. Regulatory guides are not copyrighted, and Commission approval is not required to reproduce them.

(5 U.S.C. 552(a)).

Dated at Rockville, Maryland, this 12th day of April 2000.

For the Nuclear Regulatory Commission.

Charles E. Ader,

Director, Program Management, Policy Development & Analysis Staff, Office of Nuclear Regulatory Research.

[FR Doc. 00–10293 Filed 4–24–00; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

Draft Regulatory Guide; Issuance, Availability

The Nuclear Regulatory Commission has placed a draft guide on the website for public comment. This Regulatory Guide series has been developed to describe and make available to the public such information as methods acceptable to the NRC staff for implementing specific parts of the NRC's regulations, techniques used by the staff in evaluating specific problems or postulated accidents, and data needed by the staff in its review of applications for permits and licenses.

This draft guide, temporarily identified by its task number, DG–1094 (which should be mentioned in all correspondence concerning this draft guide), is a revision of DG–1094 (64FR58461) as a result of public comments and a public meeting held on February 23, 2000. A final draft guide, identified by the task number of DG–1097, will be published shortly for formal comment. This guide has been developed to provide a comprehensive fire protection guidance document, and to identify the scope and depth of fire protection that the staff has determined to be acceptable for operating nuclear plants. This guide may be used for licensee self-assessments and as the deterministic basis for future rulemaking. This guide has been developed from a compilation of fire protection regulations, generic communications, Branch Technical Positions, and other NRC guidance. In addition, as appropriate, new guidance is provided where the existing guidance is weak or non-existent. The specific NRC fire protection requirements applicable to any given operating reactor are a function of licensing dates, specific license conditions, rule applicability statements, approved exemptions/deviations, and individual plant Safety Evaluation Reports (SERs). It is not possible to capture in a single guide all the compliance alternatives that have been previously accepted by the NRC for a given plant. This guide presents the best available methods for meeting fire protection requirements and objectives that are acceptable to the Commission, and will be used in the evaluation of fire protection programs for operating nuclear power plants. Nothing in this guide prohibits a licensee from proposing an alternative method(s) for complying with specified portions of the Commission's regulations.

The draft guide has not received complete staff approval and does not represent an official NRC staff position.

Comments may be accompanied by relevant information or supporting data. Written comments may be submitted to David L. Meyer, Chief, Rules and Directives Branch, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555. Copies of comments received may be examined at the NRC Public Document Room, 2120 L Street, NW, (Lower Level), Washington, DC 20555–0001. The public comment period for this revision of DG–1094 will close at the same time as the public comment period for the final draft guide identified by the task number of DG–1097. All comments will be incorporated in the final regulatory guide to be issued in 2001.

You may also provide comments via the NRC's interactive rulemaking website (http://www.techconf.llnl.gov/cgi_bin/topics). This site provides the availability to upload comments as files (any format), if your web browser supports this function. For information about the interactive rulemaking website, contact Ms. Carol Gallagher, (301) 415–5905; e-mail CAG@nrc.gov. For information about the draft guide and the related documents, contact Mr. E.A. Connell, (301) 415–2838; e-mail EAC@nrc.gov.

Although a time limit is given for comments on this draft guide, comments and suggestions in connection with items for inclusion in guides currently being developed or improvements in all published guides are encouraged at any time.

Regulatory guides are available for inspection at the Commission's Public Document Room 2120 L Street, NW, (Lower Level), Washington, DC. Current draft Regulatory Guides that have been issued for public comment can be found at our Rulemaking site: http://ruleforum.llnl.gov/cg__bn/rulemake?source=rg. Requests for single copies of draft or final guides (which may be reproduced) or for placement on an automatic distribution list for single copies of future draft guides in specific divisions should be made in writing to the U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, Attention: Reproduction and Distribution Services Section; or by fax to (301) 415–2289, or by e-mail to <Distribution@nrc.gov>. Telephone requests cannot be accommodated. Regulatory Guides are not copyrighted and Commission approval is not required to reproduce them. (5 U.S.C. 552(a)).

Dated at Rockville, Maryland this 18th day of April 2000.

For the Nuclear Regulatory Commission.

John N. Hannon,

Chief, Plant Systems Branch, Division of Systems Safety and Analysis, Office of Nuclear Reactor Regulation.

[FR Doc. 00–10294 Filed 4–24–00; 8:45 am]

BILLING CODE 7590–01–P

SECURITIES AND EXCHANGE COMMISSION

Issuer Delisting; Notice of Application To Withdraw From Listing and Registration; (NeoPharm, Inc., Common Stock, Par Value $.0002145 Per Share) File No. 1–12493

April 19, 2000.

NeoPharm, Inc. (''Company'') has filed an application with the Securities and Exchange Commission (''Commission''), pursuant to Section 12(d) of the Securities Exchange Act of 1934 (''Act'')[1] and Rule 12d2–2(d) thereunder,[2] to withdraw the security described above (''Security'') from listing and registration on the American Stock Exchange LLC (''Amex'') and under Section 12(b) of the Act.[3]

The Company, whose business is biotechnology, has determined to transfer trading in its Security from the Amex to the National Market of the Nasdaq Stock Market, Inc. (''Nasdaq''), which it considers to be the preeminent marketplace for the securities of biotechnology companies. The Company has registered its Security pursuant to Section 12(g) of the Act[4] by filing a Registration Statement on Form 8–A with the Commission on April 12, 2000. The Security subsequently became designated for quotation and began trading on the Nasdaq National Market, and was simultaneously suspended from trading on the Amex, on April 14, 2000.

The Company has stated that it has complied with the Rules of the Amex governing the withdrawal of its Security from listing and registration on the Exchange and that the Amex, in turn, has indicated that it will not oppose such withdrawal.

The Company's application relates solely to the withdrawal of the Security from listing and registration on the Amex and shall have no effect upon the Security's designation for quotation and trading on the Nasdaq National Market and registration under Section 12(g) of the Act.[5]

Any interested person may, on or before May 10, 2000, submit by letter to the Secretary of the Securities and Exchange Commission, 450 Fifth Street, NW, Washington, DC 20549–0609, facts bearing upon whether the application has been made in accordance with the rules of the Amex and what terms, if any, should be imposed by the Commission for the protection of investors. The Commission, based on the information submitted to it, will issue an order granting the application after the date mentioned above, unless the Commission determines to order a hearing on the matter.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[6]

Jonathan G. Katz,

Secretary.

[FR Doc. 00–10256 Filed 4–24–00; 8:45 am]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 35–27167]

Filings Under the Public Utility Holding Company Act of 1935, as Amended (''Act'')

April 18, 2000.

Notice is hereby given that the following filing(s) has/have been made with the Commission pursuant to provisions of the Act and rules promulgated under the Act. All interested persons are referred to the application(s) and/or declaration(s) for complete statements of the proposed transaction(s) summarized below. The application(s) and/or declaration(s) and any amendment(s) is/are available for public inspection through the Commission's Branch of Public Reference.

Interested persons wishing to comment or request a hearing on the application(s) and/or declaration(s) should submit their views in writing by May 12, 2000, to the Secretary, Securities and Exchange Commission, Washington, DC 20549–0609, and serve a copy on the relevant applicant(s) and/or declarant(s) at the address(es) specified below. Proof of service (by affidavit or, in the case of an attorney at law, by certificate) should be filed with the request. Any request for hearing should identify specifically the issues of facts or law that are disputed. A person who so requests will be notified of any hearing, if ordered, and will receive a copy of any notice or order issued in the matter. After May 12, 2000, the application(s) and/or declaration(s), as filed or as amended, may be granted and/or permitted to become effective.

Entergy Arkansas, Inc. (70–7571)

Entergy Arkansas, Inc. (''Arkansas''), 425 West Capitol Avenue, Little Rock, Arkansas 72201, a wholly owned electric utility subsidiary company of Entergy Corporation, a registered holding company, has filed a post-effective amendment to its application-declaration under sections 6(a), 7, 9(a) and 10 of the Act and rule 54 under the Act.

By prior Commission orders dated January 24, 1996, July 7, 1989 and December 20, 1988 (HCAR Nos. 26461, 24917 and 24787, respectively) (collectively, ''Orders''), Arkansas was authorized to enter into and amend a Fuel Lease originally dated December 22, 1988 (''Lease''), with River Fuel Funding Company #1, Inc. (''River Fuel''), under which Arkansas leases nuclear fuel required for use at its Grand Gulf Nuclear Generating Station. Under the terms of the Lease, Arkansas makes periodic lease payments to River Fuel based on the nuclear fuel consumption rate and the unamortized cost of the nuclear fuel, including financing costs (''Lease Payments'').

River Fuel originally financed its acquisition of nuclear fuel leased to Arkansas through, among other things, borrowings under a credit agreement dated December 22, 1988 (as amended, ''Credit Agreement'') with Union Bank of Switzerland (''Bank''). In the Orders, the Commission imposed limits on certain fees and rates applicable to borrowings under the Credit Agreement that were incorporated in the Lease Payments.

Specifically, under the terms of the Credit Agreement, River Fuel is currently required to pay: (1) A commitment fee of ¼ of one percent *per annum* on the daily difference between the maximum commitment under the Credit Agreement and the amount of commercial paper and revolving credit borrowings outstanding; (2) a letter of credit fee of .00625 percent *per annum* on the average aggregate amount of commercial paper outstanding during each calendar quarter; and (3) an administrative fee of $20,000 per year.

In addition, at the election of River Fuel, each revolving credit borrowing under the Credit Agreement currently bears interest at either: (a) the higher of (i) the rate publicly announced by the Bank from time to time as its prime rate,

[1] 15 U.S.C. 78*l*(d).

[2] 17 CFR 240.12d2–2(d).

[3] 15 U.S.C. 78*l*(b).

[4] 15 U.S.C. 78*l*(g).

[5] *Id.*

[6] 17 CFR 200.30–3(a)(1).

and (ii) the rate quoted by the Bank to dealers in the New York federal funds market for the overnight offering of Dollars by the Bank, plus ¼ of one percent (''Prime Rate Loan''); or (b) .00625 percent in excess of the rate at which deposits in U.S. Dollars are offered to the Bank in the London interbank market (''LIBOR Rate Loan''); provided, however, that if any drawings under letters of credit supporting commercial paper issued under the Credit Agreement are not repaid on the date of such drawings, those drawings will automatically be converted into Prime Rate Loans.

Due to changes in the credit markets that have occurred since the execution of the Credit Agreement, Arkansas now proposes to consent to River Fuel agreeing to make certain adjustments to terms and conditions that may be required in connection with any extensions of the Credit Agreement or any new credit agreements to be entered into by River Fuel replacing the Credit Agreement.

In particular, Arkansas proposes to consent to River Fuel agreeing to pay: (1) Commitment fees not exceeding a specified maximum rate greater than two percent *per annum* on the daily difference between the maximum commitment under the Credit Agreement and the amount of commercial paper and revolving credit borrowings outstanding; (2) a letter of credit fee not exceeding a specified maximum rate greater than five percent *per annum* on the average aggregate amount of commercial paper outstanding during each calendar quarter; and (3) an administrative fee not exceeding $100,000.

Arkansas further proposes to consent to River Fuel obtaining Prime Rate Loans and LIBOR Rate Loans bearing interest at rates not in excess of those rates generally obtainable at the time for loans having the same or reasonably similar maturities, obtained by companies of the same or reasonably comparable credit quality and having reasonably similar terms, conditions and features.

System Energy Resources, Inc. (70–7604)

System Energy Resources, Inc. (''SERI''), 1340 Echelon Parkway, Jackson, Mississippi 39213, a wholly owned electric utility subsidiary company of Entergy Corporation, a registered holding company, has filed a post-effective amendment to its application-declaration under sections 6(a), 7, 9(a) and 10 of the Act and rule 54 under the Act.

By prior Commission orders dated January 24, 1996, July 7, 1989, February 23, 1989 and February 21, 1989 (HCAR Nos. 26459, 24919, 24827 and 24825, respectively) (collectively, ''Orders''), SERI was authorized to enter into and amend a Fuel Lease originally dated February 24, 1989 (''Lease''), with River Fuel Funding Company #3, Inc. (''River Fuel''), under which SERI leases nuclear fuel required for use at its Grand Gulf Nuclear Generating Station. Under the terms of the Lease, SERI makes periodic lease payments to River Fuel based on the nuclear fuel consumption rate and the unamortized cost of the nuclear fuel, including financing costs (''Lease Payments'').

River Fuel originally financed its acquisition of nuclear fuel leased to SERI through, among other things, borrowings under a credit agreement dated February 24, 1989 (as amended, ''Credit Agreement'') with Union Bank of Switzerland (''Bank''). In the Orders, the Commission imposed limits on certain fees and rates applicable to borrowings under the Credit Agreement that were incorporated in the Lease Payments.

Specifically, under the terms of the Credit Agreement, River Fuel is currently required to pay: (1) A commitment fee of .00375 percent *per annum* on the daily difference between the maximum commitment under the Credit Agreement and the amount of commercial paper and revolving credit borrowings outstanding; (2) a letter of credit fee of .00775 percent [*per annum* on the average aggregate amount of commercial paper outstanding during each calendar quarter; and (3) an administrative fee of $20,000 per year.

In addition, at the election of River Fuel, each revolving credit borrowing under the Credit Agreement currently bears interest at either: (a) The higher of (i) the rate publicly announced by the Bank from time to time as its prime rate, and (ii) the rate quoted by the Bank to dealers in the New York federal funds market for the overnight offering of Dollars by the Bank, plus ¼ of one percent (''Prime Rate Loan''); or (b) .00775 percent in excess of the rate at which deposits in U.S. Dollars are offered to the Bank in the London interbank market (''LIBOR Rate Loan''); provided, however, that if any drawings under letters of credit supporting commercial paper issued under the Credit Agreement are not repaid on the date of such drawings, those drawings will automatically be converted into Prime Rate Loans.

Due to changes in the credit markets that have occurred since the execution of the Credit Agreement, SERI now proposes to consent to River Fuel agreeing to make certain adjustments to terms and conditions that may be required in connection with any extensions of the Credit Agreement or any new credit agreements to be entered into by River Fuel replacing the Credit Agreement.

In particular, SERI proposes to consent to River Fuel agreeing to pay: (1) Commitment fees not exceeding a specified maximum rate greater than two percent *per annum* on the daily difference between the maximum commitment under the Credit Agreement and the amount of commercial paper and revolving credit borrowings outstanding; (2) a letter of credit fee not exceeding a specified maximum rate greater than five percent *per annum* on the average aggregate amount of commercial paper outstanding during each calendar, quarter; and (3) an administrative fee not exceeding $100,000.

SERI further proposes to consent to River Fuel obtaining Prime Rate Loans and LIBOR Rate Loans bearing interest at rates not in excess of those rates generally obtainable at the time for loans having the same or reasonably similar maturities, obtained by companies of the same or reasonably comparable credit quality and having reasonably similar terms, conditions and features.

For the Commission by the Division of Investment Management, under delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 00–10226 Filed 4–24–00; 8:45 am]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–42697; File No. SR–Amex 00–11]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by American Stock Exchange LLC Relating to Floor Official Rulings

April 18, 2000.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'')[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on February 22, 2000, the American Stock Exchange LLC (''Amex'' or ''Exchange'') filed with the Securities and Exchange Commission (''SEC'' or ''Commission'') the proposed rule change as described

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

in Items I, II, and III below, which Items have been prepared by the Amex. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Amex proposes to revise Amex Rule 22 to require a written record of all Floor Official rulings. The text of the proposed rule change follows. Additions are in *italics*; deletions are in [brackets].

Floor Official Rulings

Rule 22 Authority of Floor Officials

(a) through (d) No change

• Commentary

.01 No change.

.02 [If requested by a member on the Floor, a Floor Official must render his decision or ruling in writing.] *A written record of all Floor Official decisions or rulings must be made on a form provided by the Exchange. The written record should be prepared as soon as practicable after the decision or ruling is made. Floor Officials must submit the completed rulings forms to the Exchange at the end of each trading day. Failure to submit completed rulings forms may result in the removal of a Floor Official or a Floor Official becoming ineligible for reappointment.*

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Amex included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Amex has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange has decided to adopt a requirement that Floor Officials provide a written record of all rulings, including rulings involving complaints of harassment, intimidation or other activities in violation of Exchange rules by either specialists or traders. Currently, Floor Officials are not required to make a written record of their rulings unless specifically requested to do so by a member. The Exchange believes, however, that a written record of Floor Official rulings will be useful, especially in situations where the conduct of floor members is involved. Having a written record of a complaint and/or a ruling involving a broad range of activities, including alleged harassment or intimidation on the trading floor, can be used in investigations and other inquiries. Therefore, the Exchange is now proposing to amend Rule 22 to require Floor Officials to make a written record of all rulings on a form provided by the Exchange. The form will be designed to be completed quickly and efficiently as soon as possible after the incident occurs or the ruling is made. The Exchange believes that a properly designed form will help alleviate concerns that Floor Officials will object to the time it takes to make a written record of their rulings. The rule will require Floor Officials to submit the form to the Exchange at the end of the trading day.

2. Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b)[3] of the Act, in general, and furthers the objectives of Section 6(b)(5),[4] in particular, because it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of change, to foster cooperation and coordination with persons engaged in facilitating transactions in securities, and to remove impediments to and perfect the mechanism of a free and open market and a national market system.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

No written comments were solicited or received with respect to the proposed rule change.

[3] 15 U.S.C. 78f(b).

[4] 15 U.S.C. 78f(b)(5).

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the Exchange consents, the Commission will:

(A) by order approve such proposed rule change, or

(B) institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the Amex. All submissions should refer to File No. SR–Amex–00–11 and should be submitted by May 16, 2000.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[5]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 00–10261 Filed 4–24–00; 8:45 am]

BILLING CODE 8010–01–M

[5] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–42696; File No. SR–CBOE–99–38]

Self-Regulatory Organizations; Chicago Board Options Exchange, Inc.; Order Approving Proposed Rule Change and Notice of Filing and Order Granting Accelerated Approval of Amendment No. 1 to the Proposed Rule Change Amending Trade Processing Rules

April 18, 2000.

On July 13, 1999, the Chicago Board Options Exchange, Inc. (''CBOE'' or ''Exchange'') submitted to the Securities and Exchange Commission (''Commission''), pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19(b)–4 thereunder,[2] a proposed rule change to amend the Exchange's trade processing rules. The proposed rule change was published for comment in the **Federal Register** on November 16, 1999.[3] The CBOE submitted Amendment No. 1 [4] to the proposed rule change on December 28, 1999. The Commission received no comments on the proposal. This order approves the proposal, as amended.

I. Description of the Proposal

The CBOE states that the purpose of the proposed rule change is to update the Exchange's trade processing rules to incorporate changes that have been made to the Exchange's trade processing system over the last few years. According to the Exchange, one significant change that has occurred at the Exchange is the increasing use of market-maker handheld trading terminals. Market-maker handheld terminals are electronically linked to the Exchange's trade processing system and trade information is sent to the Exchange's trade processing system automatically when a trade is input onto the handheld terminal. Currently, more than 85% of market-maker trade input is done through market-maker handheld terminals. Market-makers that do not use handheld terminals must manually record their trade information on a trade card and submit a copy of the card to the member's clearing firm for inclusion into the Exchange's trade processing system.

The Exchange is proposing to change Exchange Rule 6.50 to require members to file with the Exchange trade information required by Rule 6.51(d) for each Exchange transaction for which the member is responsible. The Rule currently states that only Clearing Members are required to file the required trade information with the Exchange. The Exchange believes that with the use of handhelds much of the required trade information is already provided automatically by the market-maker members.

The Exchange is deleting the phrase ''business day (the exact hours to be fixed by the Exchange'') under Exchange Rule 6.51(d), which describes when members are required to submit trade information because the Exchange no longer uses a scheduled batch process for processing trade information. Consequently, the Exchange no longer fixes the time by which trade information must be submitted. Currently, the Exchange processes trade information on a continuous real time basis as it receives input from handhelds and other electronic systems such as the Retail Automatic Execution System (''RAES'') [5] and the Exchange's Order Routing System (''ORS'') [6] throughout the trading day.

The Exchange is proposing to change Interpretation .01 to Rule 6.51 to require the buyer and seller in each transaction to immediately provide the transaction record to the member for whom the transaction was executed and/or the clearing member that will clear the transaction. Buyers and sellers who do not use handheld terminals would be required to provide the transaction record as promptly as possible to the member for whom the transaction was executed and/or the clearing member that will report the trade. Currently, Interpretation .01 requires the buyer and seller to provide the transaction record within the time frames established by the Exchange. The Exchange believes that the widespread use of technology in trading allows for the information to be provided immediately. The provision of the information immediately will allow for more efficient trade checking on an intra-day basis.

The Exchange is adding a new Interpretation .03 to Exchange rule 6.51 to explicitly set forth the requirements for submitting trade information. These requirements are currently set forth in Exchange rule 2.30, which establishes fees for late trade submission. Members are required to submit the information immediately or as promptly as possible in accordance with interpretation .03 even if a longer time period is allowed before fees for delayed submission of trade information are assessed pursuant Rule 2.30. The new interpretation sets forth the following procedures for reporting transactions pursuant to Rule 6.51(d): For trades executed via an electronic data storage medium, or electronic system, trade information shall be immediately submitted to the Exchange for trade matching and clearance. For trades not executed on an electronic data storage medium, or electronic system, trade information shall be immediately recorded on a card or ticket and submitted as soon as reasonably possible, but not later than the one hour maximum time period stated in rule 2.30.

The Exchange is amending rule 6.61 to provide that a member may receive either an Unmatched Trade Notification or an Unmatched Trade Report. An Unmatched Trade Notification is an electronic message sent to market-maker handheld users, whereas an Unmatched Trade Report is a written notice sent to all members and firms. Currently, under rule 6.61 a member only receives Unmatched Trade Reports. The Exchange is also proposing to amend Rule 6.61 to obligate members to reconcile all unmatched trades and advisory trades and to report all reconciliations to the Exchange ''or the Clearing Member responsible for submission to the Exchange.''

The Exchange is also proposing to amend Interpretation .01 to Rule 6.61 to require members and their representatives to make all reasonable efforts to resolve unmatched trades on trade day. Currently, Interpretation .01

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[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Exchange Act Release No. 42112 (Nov. 5, 1999), 64 FR 62238.

[4] *See* Letter from Timothy Thompson, Director, Regulatory Affairs, CBOE, to David Sieradzki, Special Counsel, Division of Market Regulation, Commission, dated December 23, 1999 (''Amendment No. 1''). Amendment No. 1 clarifies that the reporting obligations of Exchange Rule 6.51(a) are for public dissemination purposes while the reporting obligations of Exchange Rule 6.51(d) are for clearance purposes. Second, Amendment No. 1 revises Interpretation and Policy .01 to Exchange Rule 6.51 to clarify that members that do not use handhelds must report trades as promptly as possible regardless of the requirements of Exchange Rule 2.30 that permit trades to be reported over a longer time frame before fees are imposed automatically. Third, Amendment No. 1 changes the word ''may'' back to ''shall'' in Interpretation and Policy .01(c) to Exchange Rule 6.61 regarding the submission of unmatched trades to The Options Clearing Corporation. Fourth, Amendment No. 1 deletes the provision of Interpretation and Policy .01(d) to Exchange Rule 6.61 that states that the Exchange may establish a schedule of fines or refer violations to the Exchange's Business Conduct Committee. Finally, Amendment No. 1 changes the first reference to ''Clearing Member'' in Exchange Rule 6.60 to ''Member'' because all members are required under the proposed rule change to report trade information for clearing purposes.

[5] RAES permits automatic execution of small public customer orders.

[6] ORS provides member firms with a method of efficiently delivering orders to CBOE's trading floor. Orders received by ORS are logged onto the ORS database and evaluated, based on volume and price, to determine their routing destination on the trading floor.

states that members and their representatives must resolve unmatched trades from the previous day's trading no later than the opening of trading on the following business day. According to the Exchange, because of system enhancements, the Exchange and its members now have the tools to review trade activity on an intra-day basis. The Exchange believes that requiring reports to be reconciled on an intra-day basis can minimize potential losses to members who may have to take market action to correct an outtrade.

For trades that remain unmatched after trade day, the Exchange is proposing to amend paragraph (c) of Interpretation .01 to Rule 6.61 to change the time requirement for correcting these trades from the opening of trading on the next business day to fifteen minutes prior to the opening of trading on the next business day. This change will allow the involved parties to correct their positions and be prepared for trading sooner. The Exchange believes that by resolving the unmatched trade before the market in the underlying security opens, the parties will be in a better position to enter any necessary orders in the markets to adjust their positions where necessary.

In addition, the Exchange is adding new paragraph (a) of Interpretation .01 to Rule 6.61, which essentially is an updated version of what is now paragraph (a) of Interpretation .05 to rule 6.61. Currently, Interpretation .05 requires that a representative be available to resolve unmatched trades only for transactions in index options or in any class of options which will trade ex-dividend or ex-distribution the following day. New paragraph (a) of Interpretation .01 to Rule 6.61 will expand this requirement by stating that a representative must be available to reconcile unmatched trades for all options transactions on all trade dates.

The Exchange is also proposing to amend Rule 6.61, Interpretation .05(b) and (d) to expand the options classes which must comply with the requirement that members make reasonable efforts to detect and correct errors in carding or keying a trade and the provision that states that members who fail to comply with Rule 6.61 will be responsible for any liability resulting from an unmatched transaction that should have been matched. Currently, Interpretation .05(b) and (d) only apply to index options and any class of options which will trade ex-dividend or ex-distribution the following day. These provisions, as amended, will apply to all transactions in options.

Finally, the Exchange is proposing to amend Interpretation .05 to Exchange Rule 6.61 by revising the language to make it consistent with current practice. The Exchange has deleted references to First Pass and Second Pass. First Pass and Second Pass refer to the former practice of submitting trade information for trade processing in batches at different times during the day. The Exchange currently processes the trade information continually through the trade day.

II. Discussion

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange. In particular, the Commission finds that the proposed rule change meets the requirements of Section 6(b)(5) of the Act[7] which states that, among other things, the rules of an exchange must be designed to facilitate securities transactions and to remove impediments to and perfect the mechanism of a free and open market. Specifically, the Commission believes that given the increasing use of handheld terminals, requiring all members to report trade information, rather than just clearing members as currently required, will facilitate securities transactions by making the clearance and settlement process more efficient. As noted by the Exchange, the increasing use of handheld trading terminals has allowed certain trade information to be sent automatically at the time of the trade to the Exchange's trade processing system. Accordingly, the Commission believes changing CBOE rules to impose trade reporting obligations on all members, not just clearing members, reflects the reality of automation on the CBOE floor and imposes the trade reporting burden on those members actually reporting such information currently through handheld terminals.[8]

Under the new rules, buyers and sellers in each transaction using handheld terminals will be required to immediately provide the transaction information to the member for whom it was executed or clearing member clearing the transaction. The Commission recognizes, however, that not all members are using handheld terminals. Accordingly, under the CBOE's new rules, buyers and sellers who do not use handheld terminals would be required to provide the transaction information as promptly as possible. The Commission believes that the proposed rule change adequately accommodates members who choose not to use handheld terminals by requiring them to report trade information as promptly as possible rather than immediately.

In addition, the Commission believes that, by requiring members to take all reasonable efforts to resolve unmatched trades on the day of the trade, rather than by the opening of trading on the following business day, the proposed rule change will minimize the potential loss to members who may have to take action to correct an outtrade. Similarly, the Commission believes that requiring all trades that remain unmatched after the trade day to be resolved at least fifteen minutes prior to the open of trading will enable involved parties to be better prepared for the open of trading and in a better position to enter any necessary orders in the markets to adjust their positions where necessary. The Commission further believes that requiring members to have a representative available to resolve unmatched trades for all options, rather than only index options and options that will trade ex-dividend or ex-distribution the following day, will help to ensure that all unmatched trades are resolved as quickly as possible. Moreover, the Commission believes that requiring members who fail to observe the procedures of Exchange rule 6.61 to be responsible for unmatched trades in all options that should have matched and requiring members to make reasonable efforts to detect and correct errors attributable to carding or keying a trade in all options[9] will also help to ensure that unmatched trades are resolved more quickly. Finally, the Commission believes that the proposed rule change, as a whole, recognizes and accommodates technological advances on the floor of the Exchange, and updates the CBOE rules to reflect these changes.

The Commission finds good cause to approve Amendment No. 1 to the proposed rule change prior to the 30th day after the date of publication of notice of filing thereof in the **Federal Register**. The Commission notes that Amendment No. 1 merely makes certification clarifications to the proposed rule change and does not present any new regulatory issues.

[7] 15 U.S.C. 78f(b)(5). In approving this rule change, the Commission has considered the proposal's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[8] We note that the CBOE states in its filing the 85% of market-maker trade input is currently done through handheld terminals.

[9] As noted above, these provisions previously applied only to index options and options trading ex-dividend or ex-distribution the following day.

Accordingly, the Commission finds that good cause exists, consistent with section 6(b)(5) [10] and 19(b)(2) [11] of the Act to accelerate approval of Amendment No. 1 to the proposed rule change.

III. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning Amendment No. 1, including whether Amendment No. 1 is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room, in Washington, DC. Copies of such filing will also be available for inspection and copying at the principal office of the CBOE. All submissions should refer to File No. SR–CBOE–99–38 and should be submitted by May 16, 2000.

IV. Conclusion

It Is Therefore Ordered, pursuant to section 19(b)(2) of the Act,[12] that the proposed rule change (SR–CBOE–99–38), as amended, is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[13]

Margaret H. McFarland,

Deputy Secretary.

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[10] 15 U.S.C. 78f(b)(5).

[11] 15 U.S.C. 78s(b)(2).

[12] 15 U.S.C. 78s(b)(2).

[13] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–42693; File No. SR–CBOE–99–03]

Self-Regulatory Organizations; Order Approving Proposed Rule Change by the Chicago Board Options Exchange, Inc. Relating to Option Exercise Procedures

April 17, 2000.

On January 20, 1999, the Chicago Board Options Exchange, Inc. (''CBOE'' or the ''Exchange'') filed with the Securities and Exchange Commission (''SEC'' or ''Commission'') a proposed rule change pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4 thereunder.[2] In its filing, CBOE proposes to amend Exchange Rules 4.16 and 11.1 relating to option exercise procedures for noncash-settled equity options and American-style, cash-settled index options, as well as to reflect in an Exercise Regulatory Circular the proposed changes to American-style, cash-settled index options, and a change approved in a prior Commission Order relating to those options.[3] On May 10, 1999, the Exchange submitted to the Commission Amendment No. 1 to the proposed rule change.[4] The proposed rule change and Amendment No. 1 were published for comment in the **Federal Register** on June 1, 1999.[5] The Commission received no comments on the proposal. This Order approves the proposed rule change as amended.

I. Description of the Proposal

A. Exercise Procedures for American-Style, Cash-Settled Index Options After Certain Trading Halts and During a Trading Resumption That May Follow Such Trading Halts

The CBOE proposes to modify its rules governing the exercise of American-style, cash-settled index options during certain trading halts. In addition, if trading resumes following a trading halt (such as by closing rotation), the Exchange proposes to permit exercises to occur during the resumption of trading and for five minutes after the close of the resumption of trading. In particular, the Exchange proposes to modify CBOE Rules 11.1 and 4.16 to permit the exercise of American-style, cash-settled index options during a trading halt that occurs at or after 3:00 p.m. (Central Time).[6] A number of index options are traded on the Exchange from 8:30 a.m. To 3:15 p.m. (CT),[7] whereas the markets for the equity securities underlying those index options generally close for trading by 3:00 p.m. (CT). CBOE Rule 11.1 governs the exercise of option contracts, including index option contracts, and provides that Exchange members will follow the procedures of the Options Clearing Corporation (''OCC''), as well as those of the Exchange, when exercising option contracts. CBOE Rule 4.16 governs other restrictions on options transactions and exercises. Under CBOE Rule 11.1.05 [8] and CBOE Rule 4.16(b), exercises of cash-settled index options are prohibited whenever trading in such options is delayed, halted or suspended, unless otherwise determined by the Exchange's President or his designee.[9] The Exchange has long noted that one of the distinctive characteristics of a cash-settled option is that its exercise is functionally equivalent to trading out of the long position, and, conversely, the assignment of a short option eliminates

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] The Exchange's Exercise Regulatory Circular sets forth procedures and requirements regarding the exercise of American-style, cash-settled index options. In 1998, the CBOE filed with the Commission the Exercise Regulatory Circular, *See* Securities Exchange Act Release No. 40334 (August 18, 1998), 63 FR 45275 (August 25, 1998) (File No. CBOE–98–34).

[4] *See* Letter from Arthur B. Reinstein, Counsel, CBOE, to Hong-anh Tran, Attorney, Division of Market Regulation (''Division''), SEC, dated May 10, 1999 (''Amendment No. 1'').

[5] Securities Exchange Act Release No. 41435 (May 21, 1999), 64 FR 29370 (June 1, 1999) (File No. SR–CBOE–99–03).

[6] Currently, the Exchange trades only one type of standardized American-style, cash-settled index option contract, Standard & Poor's 100 index options (''OEX index options'').

[7] CBOE Rule 24.6, *Days and Hours of Business.*

[8] The Exchange is proposing to move the text of CBOE Rule 11.1.05, which relates to the exercise of American-style, cash-settled index options, to proposed CBOE Rule 11.1.03(h) for ease of reference for Exchange members.

[9] The Exchange is also proposing to reflect the Commission's 1999 approved rule changes to CBOE Rule 11.1.05 and CBOE Rule 4.16(b) in an Exercise Regulatory Circular. In 1999, the Commission approved rule amendments to CBOE Rule 11.1.05 and CBOE Rule 4.16(b), which state that with the exception of the last business day prior to expiration, exercises of cash-settled index options will be prohibited during any time when trading in such options is delayed, halted, or suspended, unless otherwise determined by the Exchange's President or his designee. The 1999 rule amendments also stated that, notwithstanding this prohibition, the exercise of a cash-settled index option may be processed and given effect in accordance with and subject to the rules of the OCC while trading in an option is delayed, halted, or suspended if it can be documented that the decision to exercise the option was made during allowable time frames prior to the delay, halt or suspension. The Commission approved these rule amendments in 1999, but the Exchange did not propose, at that time, to reflect those rule amendments in an Exercise Regulatory Circular. *See* Securities Exchange Act Release No. 40951 (January 15, 1999), 64 FR 4482 (January 28, 1999) (File No. SR–CBOE–98–33).

the position as if it had been closed through a purchase transaction. Absent any restrictions upon exercise, holders of long positions would be able to unwind their positions by exercising their options through the OCC during trading halts and after the close of trading. Because holders of short positions are precluded from unwinding their positions through trading (*i.e.*, sell their options) when trading on the CBOE is closed or halted, they would be at a disadvantage to holders of long positions. These rules were developed to reduce the advantage arising for those in long positions over those in short positions during trading halts (on any days other than on the last trading day before expiration Friday).[10]

Since 1991, the Exchange has permitted holders of long index options an additional five minutes subsequent to the close of trading on the CBOE to make their exercise decisions (*i.e.*, generally up to 3:20 p.m. (CT)).[11] The Exchange believed that the five-minute exercise window benefitted options investors generally by fostering higher quality markets. In particular, permitting the exercise of American-style, cash-settled index options up to 3:20 p.m. (CT) allows market participants to make investment decisions based on the evaluation of their final positions after having completed trading for the day. Moreover, the additional five-minute exercise period provides market participants with additional time to evaluate the closing prices of the securities that comprise an index and to determine whether or not to exercise their positions. The Exchange adopted the five-minute exercise window notwithstanding that investors holding short positions in index options would not have the same opportunity to trade (*i.e.*, to unwind their options positions) during this period as would holders of long index positions, who would be able to exercise through the OCC during the same period. In doing so, the Exchange believes that the benefits to the overall American-style, cash-settled index market from the five-minute exercise period exceed any potential harm that might result to holders of short index options.

The Exchange now proposes to amend the Exchange Rules 4.16 and 11.1 relating to exercise restrictions for American-style, cash-settled index options and to permit holders of long index options to exercise through the OCC during trading halts occurring at our after 3:00 p.m. (CT). As mentioned, the trading markets for the equity securities underlying those index options generally are closed for trading by 3:00 p.m. (CT), and their closing values are generally established by this time. Market participants will seek to exercise their index options by this time. Many participations in the index options market utilize the closing value of the index to make trading and hedging decisions (including transactions in the related futures market) contingent upon exercise of an index option position or expected assignment of a short position. Given this, the Exchange believes that the occurrence of a trading halt at or after 3:00 p.m. (CT) should not fundamentally alter the ability of holders of long index options to exercise their options.[12] While permitting the exercise of American-style, cash-settled index options during trading halts that occur at or after 3:00 p.m. (CT) increases the difference in treatment between holders of short and long positions in American-style, cash-settled index options, the Exchange believes that any increase in the difference of treatment is incremental given that the Exchange currently allows holders of long index options positions an additional five minutes after the close of the Exchange to make their exercise decisions. The Exchange represents that the additional benefits that would be afforded to the index market under the proposed rule amendments outweighs the additional differences in treatment between holders of long and short index options positions.

Furthermore, the Exchange proposes that if trading resumes following a trading halt (such as by closing rotation), the Exchange would continue to permit holders of long index options in American-style, cash-settled index options to make their exercise decisions during the resumption of trading and for a five-minute period after the close of the resumption of trading. The Exchange represents that permitting the additional five-minute exercise period after the close of the resumption of trading is consistent with what the Exchange currently permits as the additional exercise period after the daily close of trading on the Exchange.[13]

The Exchange generally will continue to prohibit American-style, cash-settled index option exercises during any trading halt which occurs before 3:00 p.m., as the length of time required to provide sufficient notice and opportunity equally to all market participants during an intra-day trading halt would unfairly expand the opportunity for holders of long index option positions to exercise when short option holders are prohibited from trading.

B. Exercise Procedures for American-style, Cash-settled Flex Index Options

The Exchange proposes to amend CBOE Rules 4.16(b) and CBOE Rule 11.1.03 to treat both standardized and FLEX American-style, cash-settled index options in the same manner with respect to exercise restrictions.[14] In particular, the Exchange proposes to amend the language in proposed CBOE Rules 4.16(b) and 11.1.03 to state that if a trading delay, halt, suspension, resumption, closing rotation, or modified trading hours occurs in a standardized index option (either American-style or European-style), then the Exchange will treat the related American-style, cash-settled FLEX Index Option (if any) for purposes of exercise procedures as if that same condition had occurred in the American-style, cash-settled FELX Index Option. The Exchange would then apply the same exercise procedures to the related American-style, cash-settled FLEX Index Option as established for the standardized index option following the market condition. Although the market condition will be deemed to have taken place in the related American-style, cash-settled FLEX Index Option for the purpose of triggering the same exercise procedures relating to that market condition, the market condition may or may not have actually occurred with respect to the American-style, cash-settled FLEX Index Option.[15]

Thus, for example, if there is a trading halt that occurs before 3:00 p.m. (CT) in standardized Standard & Poor's 500 Index (SPX) options (which are European-style options and which can be exercised only at expiration),

[10] Exercises of expiring American-style, cash-settled index options cannot be restricted in any way on the last business day prior to their expiration. *See* CBOE Rules 4.16 and 11.1.

[11] *See* CBOE Rule 11.1.03. *See* Securities Exchange Act Release No. 29860 (October 25, 1991), 56 FR 56254 (November 1, 1991) (File No. SR–CBOE–91–28).

[12] While implementing the standard five minutes exercise window after a trading halt has been announced would provide floor traders with sufficient opportunity to exercise, such a small window may not provide other market participants with a sufficient opportunity to do so an would add to the increased operational burdens of member firms resulting from the trading halt itself.

[13] *See* proposed CBOE Rule 4.16(b)(iii) and proposed CBOE Rule 11.1(h)(iii).

[14] The Exchange also proposes to reflect these rule amendments in an Exercise Regulatory Circular.

[15] Pursuant to a telephone conversation between Arthur B. Reinstein, Counsel, CBOE, and Hong-anh Tran, Attorney, Division, SEC, dated August 30, 1999.

exercises of American-style, cash-settled SPX FLEX options would be prohibited during the trading halt. Similarly, if there is a trading halt in the standardized SPX options that occurs at or after 3:00 p.m. (CT), the Exchange would deem that a trading halt has also occurred in the related American-style, cash-settled SPX FLEX options, and would allow exercises of American-style, cash-settled SPX FLEX options to occur through 3:20 p.m. (CT). Additionally, if there was a closing rotation in the standardized SPX options, the Exchange would deem that a closing rotation has occurred in the related American-style, cash-settled SPX FLEX options for the purpose of triggering the exercise procedures relating to that condition, and would allow exercises of American-style, cash-settled SPX FLEX options to occur during the closing rotation for standardized SPX options and for five minutes thereafter.[16]

The Exchange represents that the proposed amendment is consistent with how the Exchange has historically applied the exercise provisions that are applicable in the above market conditions to American-style, cash-settled FLEX Index Options. Hence, the Exchange proposes to codify the Exchange's prior exercise practices as they apply to American-style, cash-settled FLEX Index Options.[17]

C. Extension of Exercise Notification Deadline and Cut-off-Time

The Exchange proposes to amend the second provision of proposed CBOE Rule 11.1.06(d) to grant the CBOE President or his designee the authority to extend the exercise notification deadline for noncash-settled equity options under unusual circumstances. The Exchange also proposes to amend CBOE Rule 11.1(b) and the first provision within proposed CBOE Rule 11.1.06(d) to grant the President of CBOE or his designee the authority to extend the 4:30 p.m., exercise cutoff time for noncash-settled equity options under unusual circumstances.[18] In such case, the deadline for the delivery of an exercise instruction, ''contrary exercise advice,'' and ''advice cancel'' based on proposed CBOE Rule 11.1.06(d) would be the revised exercise cutoff time designated by the President or his designee. For example, on rare occasions, the closing rotation in an equity option has ended shortly before 4:30 p.m. (CT) (*i.e.,* the normal exercise cutoff time for these options). The exchange believes that a late-ending closing rotation delays a market participant in taking the actions necessary to make and process an exercise decision. This proposal would permit the President or his designee to extend the exercise notification deadline and the exercise cutoff time so that market participants can have adequate time to make informed exercise decisions and to process them under unusual situations.

The Exchange also proposes to permit CBOE's President or his designee to extend the applicable deadline for the delivery of ''exercise advice'' and ''advice cancel'' notifications pursuant to CBOE Rule 11.1.03(c) for American-style, cash-settled index options if unusual circumstances are present.[19] CBOE Rule 11.1.03 currently requires members to notify the Exchange by 3:20 p.m. (CT) (or if trading hours are extended or modified in the applicable option class, no later than five minutes after the close of trading on that day) of their exercise decisions with respect to American-style, cash-settled index options and sets forth procedures for providing such notification. The Exchange represents that under certain unusual circumstances, market participants have had difficulty meeting the 3:20 p.m. (CT) notification deadline. For example, on rare occasions, the reporting authority for an index has been late in reporting the closing value for the index. Consequently, market participants have found it difficult on those occasions to make and process exercise decisions before the 3:20 p.m. (CT) deadline. This amendment proposes to amend CBOE Rule 11.1.03(c) to permit the President of CBOE or his designee to extend the applicable deadline for the delivery to the Exchange of ''exercise advice'' and ''advice cancel'' notifications for American-style, cash-settled index options under unusual situations.

Under the Exchange's current rules, there is a time window following the close of trading during which long option holders are permitted to exercise their option positions while at the same time short option holders do not have the ability to trade out of their positions. Accordingly, as discussed above, one of the inherent differences between holding a long or short option position is that there is a disparity between the ability of long and short option holders to take market action following the close of trading. The purpose of the Exchange's exercise deadline for American-style, cash-settled index options and non-cash-settled equity options, as well as the exercise cutoff time for non-cash settled equity options is to restrict this disparity to a limited time period following the close of trading in those situations in which long option holders have the ability to take action through the exercise or non-exercise of an option that can affect their position in the market. Although permitting the President of CBOE or his designee the authority to extend the applicable exercise deadline or cut-off time in unusual circumstances would marginally increase this existing disparity, the Exchange believes that any potential detriment that may result from the implementation of the foregoing rule would be far exceeded by the benefit to the marketplace as a whole that is derived from allowing the President of CBOE or his designee to permit market participants sufficient time to make informed exercise decisions and to process their exercise decisions under unusual circumstances.

The Exchange further notes that the President or his designee will only exercise this authority in unusual circumstances and thus that extensions in the applicable exercise deadline or cut-off time will not occur often. The Exchange represents that the President or his designee would in no event extend the applicable exercise deadline or cutoff time beyond the exercise cutoff time required by the OCC.[20]

D. Documentation Evidencing Timely Exercise Determinations Made Prior to a Trading Delay, Halt or Suspension

As discussed above, Exchange members are expected from the general prohibition on exercising American-style, cash-settled index options during trading halts, delays, or suspensions

[16] The Exchange represents that the rule amendments would not actually cause a closing rotation to occur in the American-style, cash-settled SPX FLEX options. Pursuant to a telephone conversation between Arthur B. Reinstein, Counsel, CBOE, and Hong-anh Tran, Attorney, Division, SEC, dated August 30, 1999.

[17] The Exchange presently sets forth in the same Exercise Regulatory Circular the exercise procedures relating to standardized and FLEX, American-style, cash-settled index options.

[18] The exercise cutoff time for noncash-settled equity options is 4:30 p.m. (CT) and is in effect on expiration Friday for expiring contracts. Members must not exercise through the OCC past this exercise cutoff time unless one of the three exceptions in CBOE Rule 11.1 applies. Members who violate this rule are subject to disciplinary action, including summary fines under CBOE Rule 17.50(g)(8).

[19] The Exchange has a rule relating to the deadline for the delivery of exercise notifications for American-style, cash-settled index options, but no similar rule relating to the exercise cutoff time for these options. *See* CBOE Rule 11.1.03.

[20] The OCC has separate rules regarding the cutoff time by which exercise notices must be delivered to the OCC by the clearing members. *See* OCC Chapter VIII, (Exercise and Assignment).

provided they can document that the decision to exercise was made prior to the trading halt, delay, or suspension. Currently, the Exchange accepts as evidence of timely exercises internal exercise memoranda prepared by CBOE members, a copy of ''exercise advices'' transmitted electronically to OCC via OCC's Clearing Management and Control System (C/MAS), or a member's ''exercise advice'' previously submitted to the Exchange.

The Exchange now believes that it would be preferable to rely on, and encourage the most objective evidence available as to, the timing of an exercise decision. For this reason, the Exchange proposes to no longer ordinarily accept internal exercise memoranda prepared by CBOE members. The Exchange will continue to accept ''exercise advices'' transmitted via C/MAS, or a member's copy of an exercise advice previously submitted to the Exchange as evidence of timely exercise decisions made prior to a trading delay, or suspension.[21]

II. Discussion

After careful consideration, the Commission has determined to approve the Exchange's proposal, finding that it is consistent with Section 6(b)(5) of the Act.[22] Section 6(b)(5) provides that the rules of an exchange be designed to foster cooperation and coordination with persons engaged in regulating, clearing, settling, and processing information regarding the exercise of outstanding option contracts, to remove impediments to and perfect the mechanisms of a free and open market, to promote just and equitable principles of trade, and to protect investors and the public interest.[23]

A. Exercise Procedures for American-Style, Cash-Settled Options After Certain Trading Halts and During a Trading Resumption That May Follow Such Trading Halt

First, the Commission believes that the proposal relating to the ability of market participants to exercise American-style, cash-settled index options during a trading halt occurring at or after 3:00 p.m. (CT) is appropriate based on the reasons set forth below.

The Commission believes that the occurrence of a trading halt at or after 3:00 p.m. (CT) should not fundamentally alter the ability of holders of long index options to exercise through the OCC. As discussed above, the trading markets for the equity securities underlying index options generally are closed for trading by 3:00 p.m. (CT), thereby establishing the value of a given index. By this time, market participants are already watching the market for opportunities to exercise their index options. Many participants in the index options market use the closing value of the index to make trading and hedging decisions (including transactions in the related futures market) contingent upon exercise of an index option position or the expected assignment of a short position. Thus, the Exchange believes that the occurrence of a trading halt at or after 3:00 p.m. (CT) should not fundamentally alter the ability of holders of long index options to exercise their options.

Because the Exchange currently allows its members an additional five minutes after the close of trading for the holders of long index options to make their exercise decisions, the Commission believes that the implementation of the above rule amendment would only marginally increase the exercise time period for holders of long index options to exercise through the OCC. The Commission believes that permitting holders of long positions in an American-style, cash-settled index, option to submit their exercise decisions during a trading halt occurring at or after 3:00 p.m. (CT) would remove the impediments to, and perfect the mechanism of, a free and open market during such a halt.

The Commission also believes that the proposed amendment to permit exercise of standardized American-style, cash-settled index options during a trading resumption (such as a closing rotation) following a trading halt occurring at or after 3:00 p.m. (CT), and for a five minute period thereafter, is appropriate because it will promote just and equitable principles of trade. First, the Commission believes that the proposed amendment will reduce potential confusion among CBOE members and customers during a trading resumption that may follow a trading halt occurring at or after 3:00 p.m. (CT). Second, the Exchange presently permits an additional five-minute window after the close of options trading on the Exchange for market participants to make exercise decisions. The Commission believes that the proposed amendment, which will also permit the additional five-minute window after the close of a trading resumption following a late trading halt, will maintain consistency among the rules of the Exchange, and will promote just and equitable principles of trade.

B. Options Exercise Procedures for American-Style, Cash-Settled Flex Index Options

The Commission also believes that the proposed amendment to treat all American-style, cash-settled index options (standardized and FLEX) in the same manner with regard to exercise procedures is reasonable because it promotes just and equitable principles of trade. In particular, CBOE's Exercise Regulatory Circular, which the Exchange filed with the Commission in 1998,[24] currently sets forth the policies regarding exercise procedures and requirements for all American-style, cash-settled index options. The Exchange has always treated all American-style, cash-settled index options in the same manner with respect to exercise procedures. However, certain rules relating to FLEX options would make it impossible for all American-style, cash-settled index options to be treated the same for exercise procedure purposes. For example, the CBOE cannot apply to American-style, cash-settled FLEX Index Options its proposed rule regarding exercise procedures during a closing rotation and for five minutes thereafter such rotation because CBOE Rule 24A.3 currently does not permit opening or closing rotations to be conducted in FLEX options. Accordingly, the CBOE is proposed to change CBOE Rules 4.16(b) and 11.1.03[25] to deem, for purposes of the exercise procedures, a trading delay, halt, suspension, resumption, closing rotation, or modified trading hours to take place in the American-style, cash-settled FLEX Index Options, anytime the same condition occurs in the related American-style, cash-settled standardized index option (either American-style or European-style). The Commission believes that the proposal is appropriate and necessary to ensure that equal treatment of two similar options products.

[21] *See* Exercise Regulatory Circular, Section 11.

[22] 15 U.S.C. 78f(b)(5).

[23] In approving the proposal, the Commission has considered its impact on efficiency, competition, and capital formation 15 U.S.C. 78c(f).

[24] *See* Securities Exchange Act Release No. 40334 (August 18, 1998), 63 FR 45275 (August 25, 1998) (SR–CBOE–98–34).

[25] The Commission also notes that the Exchange is moving the text of CBOE Rule 11.1.05 (which related to the procedures for exercise of American-style, case-settled index options) to proposed CBOE Rule 11.1.03(h). CBOE Rule 11.1.03 sets forth the exercise procedures and requirements of American-style, cash-settled index options. The Commission believes that these changes do not substantially alter the meaning of, and will make it easy for Exchange members to refer to these rules because all the provisions relating to the exercise procedures for American-style, cash-settled index options will be set forth under the same rule.

C. Extension of Exercise Notification Deadline and Exercise Cutoff

The Commission notes that the purpose of the Exchange's exercise notification deadline [26] for American-style, cash-settled index options, and noncash-settled equity options, as well as the exercise cutoff time for noncash-settled equity options is to limit the differences in the ability of long options holders as compared to short options holders to offset their positions through exercise following the close of trading. The Commission recognizes that permitting the President or his designee to extend the applicable exercise deadline or cut-off time in unusual circumstances will marginally increase this existing disparity. The Commission, however, believes that any potential detriment that may result from increasing the disparity between long and short options holders will be exceeded by the benefit of allowing the President or his designees to give market participants additional time in which to make and process exercise decisions under unusual circumstances.

Furthermore, the Commission believes that the proposed rule change will promote efficient exercise procedures for both equity and index options by permitting market participants the opportunity to make informed decisions before exercising their options under unusual circumstances. For example, it would be an unusual circumstance if the reporting authority was late in reporting the closing value of an American-style, cash-settled index option, or if there were not enough time to process an exercise decision for a noncash-settled equity option due to a late closing rotation that ended just before the normal deadline for submitting the exercise notice to the Exchange. These provisions will also promote just and equitable principles of trade because public customers or Exchange members should not have to make exercise decisions based on incomplete information about the index value (in the case of index options) and should have time to process their exercise decisions (in the case of equity options). The Commission also notes that the Exchange represents that its President or his designee will only exercise this authority in unusual circumstances, and that extensions in the applicable exercise deadline or cutoff time will not occur often. The Exchange further represents that the Exchange's President or his designee will in no event extend the applicable exercise deadline or cut-off time beyond the time required by the OCC for submission of exercise instructions by its clearing members.

D. Documentation Evidencing Timely Exercise Determinations Made Prior to a Trading Delay, Halt, or Suspension

Finally, the Commission believes that it is reasonable for the Exchange to no longer ordinarily accept internal exercise memoranda prepared by CBOE members as evidence of timely exercise determinations of American-style, cash-settled (standardized, or FLEX) index options made prior to a trading delay, halt, or suspension. The Commission believes that by allowing only objective evidence to indicate timely exercise determinations, the proposal promotes the ability of the Exchange to verify the authenticity of the exercise documents.

III. Conclusion

It Is Therefore Ordered, pursuant to Section 19(b)(2) of the Act,[27] that the proposed rule change (SR–CBOE–99–03) is approved, as amended.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[28]

Margaret H. McFarland,

Deputy Secretary.

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[26] *See* Securities Exchange Act Release No. 40334 (August 18, 1998), 63 FR 45275 (August 25, 1998) (SR–CBOE–98–34).

[26] 15 U.S.C. 78s(b)(2).

[27] 17 CFR 200.30–3(a)(12)

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–42704; File No. SR–DTC–00–04]

Self-Regulatory Organizations; the Depository Trust Company; Order Granting Approval of a Proposed Rule Change Relating to the Profile Modification Feature of the Direct Registration System

April 19, 2000.

On February 28, 2000, The Depository Trust Company (''DTC'') filed with the Securities and Exchange Commission (''Commission''), pursuant to section 19(b)(1) of the Securities Exchange Act or 1934 (''Act''),[1] a proposed rule change. Notice of the proposal was published in the **Federal Register** on March 15, 2000.[2] The Commission received five comment letters in response to the proposed rule change.[3] The Commission is publishing this order to grant approval of the proposed rule change.

I. Description

The Profile Modification System (''Profile''), a feature of the Direct Registration System (''DRS''), is an electronic messaging system that allows a DTC participant (*i.e.*, generally a broker-dealer) or a DRS limited participant (*i.e.*, a transfer agent) [4] to submit instructions to transfer investors' book-entry position from one to the other.[5] The primary purpose of DTC's filing is to modify Profile by incorporating the use of an electronic screen-based indemnification. As described more fully below, the inclusion of the electronic indemnification in Profile enables DTC to make DRS fully operational and available for use by qualified issuers, DTC participants, and DRS limited participants. DTC's filing also establishes the procedures governing the use of Profile in the Participant Terminal System (''PTS'') [6] and specifies the fees connected with the use of Profile.

A. Background

Since 1996 when the New York Stock Exchange, Inc. (''NYSE'') and the National Association of Securities

[1] 15 U.S.C. 78s(b)(1).

[2] Securities Exchange Act Release No 42504 (March 8, 2000), 65 FR 14003.

[3] Letters from Stephen J. Dolmatch, Executive Vice President, General Counsel, and Secretary, Chase Mellon Financial Group (April 3, 2000); John Cirrito, Chief Operating Officer and Managing Director, ING Barings (April 5, 2000); William Talbot, Vice President, Pershing (April 5, 2000); Jerome Clair, Chairman, Securities Industry Association (''SIA'') Operations Committee, SIA (April 6, 2000); Larry E. Thompson, Managing Director and Deputy General Counsel, DTC (Apri 7, 2000); Charles V. Rossi, Division President, EquiServe Limited Partnership (April 19, 2000).

[4] For a description of DRS limited participants, refer to Securities Exchange Act Release No. 37931 (November 7, 1996), 61 FR 58600 (November 15, 1996).

[5] For a description of DRS and Profile, see Securities Exchange Act Release No. 35038 (December 1, 1994), 59 FR 63652 (concept release relating to DRS); Securities Exchange Act Release No. 41862 (September 10, 1999), 64 FR 51162 (September 21, 1999) (order approving implementation of the Profile Modification feature of DRS); Securities Exchange Act Release No. 42366 (January 28, 2000), 65 FR 5714 (February 4, 2000) (order approving an interpretation of an existing rule pertaining to DRS).

[6] DTC's procedures governing the use of Profile in PTS are attached as Exhibits 3 and 4 to DTC's filing. Copies of DTC's proposed rule change and the attached exhibits are available at the Commission's Public Reference Section or through DTC. In addition, DTC understands that the DRS Committee is developing guidelines to the use of DRS. When such guidelines have been approved by the DRS Committee, DTC will work with the DRS Committee to implement the guidelines. Members of the DRS Committee include representatives from the American Society of Corporate Secretaries, Corporate Transfer Association, Securities Industry Association, Securities Transfer Association, and DTC.

Dealers, Inc. modified their listing criteria to permit listed companies to issue securities in book entry using DRS in lieu of issuing certificates, there has been a steady growth in securities issued through DRS. There has also been a corresponding increase in the movement of share positions from investors' accounts at DRS limited participants to DTC participants' accounts at DTC.[7] In connection with the movement of DRS share positions, DRS limited participants have been processing thousands of hard copy transaction advices [8] or other written instructions to transfer DRS positions.

There is substantial evidence to indicate that this paper-based processing of transaction advices, which is currently required by DRS limited participants to transfer DRS position, is labor intensive and slow. Without Profile, an investor or a DTC participant acting as an investor's agent, must have the transaction advice medallion signature guaranteed and physically delivered to the DRS limited participant. When the transaction advice is received, the DRS limited participant determines that the signature guarantee is valid and enters the information into its system to process the instructions. Only after the DRS limited participant completes its processing is the investor's DRS position moved to the DTC participant's account at DTC. In addition, since the information contained on the transaction advice is not standardized throughout the industry, investors (or DTC participants sending the transaction advices on behalf of their customers) do not always provide the correct or complete information necessary to process the instruction thereby further slowing the transfer of DRS account positions.

The DRS Committee, the industry committee responsible for designing DRS, has been working through the various legal and processing issues in an effort to reduce the handling of hard copy documents associated with processing transactions advices and to develop an electronic indemnification mechanism to replace the physical signature guarantees.[9] In January 1999, the DRS Committee approved Profile's system specifications, which included a screen-based indemnification, and authorized DTC to proceed with the development of Profile.[10] DTC completed production on Profile on June 15, 1999.[11]

After DTC began development of Profile according to the agreed upon specifications, issues arose as to whether the screen-based indemnification provided sufficient protection to address perceived risks and liabilities to investors, DRS limited participants, and issuers. Some members of the DRS Committee contended that a more comprehensive indemnification agreement between DTC participants and DRS limited participants was needed. In addition, these members asserted that guarantors (*i.e.*, the initiators of the instruction to move an investor's position) should subscribe to surety bond coverage that would specifically cover DRS transactions in the event that a guarantor refused or failed to satisfy a claim that the transfer was unauthorized.[12] Since physical signature guarantees are administered through industry programs such as the Securities Transfer Association Medallion Program (''STAMP'') and the NYSE's Medallion Stamp Program (''MSP''), several DRS Committee members suggested that these industry groups should extend their current programs to include the use of an indemnification agreement and surety bond to cover the use of an electronic indemnification in DRS transactions.

Over the past year the DRS Committee, in coordination with STAMP and MSP, has attempted to reach consensus on an indemnification program. To date, the parties have not reached consensus. In the meantime, issuers have continued to put additional investors into DRS even though Profile remained inoperable due to the lack of an electronic indemnification.

B. DTD's Profile and Electronic Indemnification

In making Profile operational, DTC will require the use of a screen-based indemnification until such time as an electronic guarantee program is established. Under the rule change, a DTC participant and DRS limited participant will submit investors' instructions electronically via DTC's PTS or via the Computer-to-Computer Facility (''CCF''). Profile will provide the same information set out in the transaction advice by requiring a DTC participant or DRS limited participant to enter specific information, including the investor's account registration, tax I.D. number, DRS account number with the DRS limited participant, CUSIP number, and number of shares to be transferred. DTC participants and DRS limited participants will use the information provided through Profile to ensure that beneficial ownership does not change when there is a share movement.

A DTC participant submitting a Profile instruction to a DRS limited participant will agree to a PTS screen indemnity substantially in the following form:

(1) Participant represents that it has authority and consent for the request appearing on the following screen from either (a) the registered owner on the participant's record or (b) a third party who has actual authority to act on behalf of the registered owner on participant's records, and that all information shown is accurate and complete, except that, with respect to the taxpayer identification number included in such information, to the best knowledge of participant, such information is accurate and complete;

(2) Participant indemnifies the issuer, its transfer agent and their respective officers, directors, shareholders, employees, agents, representatives, subsidiaries, parents, affiliates, successors and assigns against any breach of such representations in connection with the transaction that is the subject of such request.

Upon receipt of an instruction, a DRS limited participant will indicate whether the transaction is approved or rejected. For rejected instructions, the DRS limited participant will supply reject codes that will indicate the reason for rejecting. When the DRS limited participant approves a DTC participant's instruction for the movement of an

[7] Movements of share positions within DTC from DRS limited participants' accounts to DTC participants' accounts is done through the use of ''free deliver orders.'' In 1999, the volume of DRS-related free deliver orders exceeded 183,000 transactions. In comparison, the volume of DRS-related free deliver orders in 1998 was 87,148 transactions.

[8] Transaction advices are statements indicating account positions or activity. DRS limited participants generally require the transaction advices before they will move a DRS position from the books of the issuer to the account of a DTC participant at DTC.

[9] *Supra* note 6.

[10] DRS Committee meeting minutes of January 12, 1999. Minutes of the DRS Committee meetings are available from DTC.

[11] DTC filed and the Commission approved a rule change that attempted to resolve an impasse that had developed between DTC participants and DRS limited participants regarding the use of Profile, including the use of an electronic indemnification. The rule change barred DRS limited participants from making additional securities issues eligible for DRS until after January 15, 2000, if DRS limited participant had not agreed to implement Profile by September 15, 1999. Securities Exchange Act Release No. 41862 (September 10, 1999), 64 FR 51162. DTC subsequently filed an interpretation of its rule change to clarify that a DRS limited participant implemented Profile when it entered into a written agreement with DTC stating that it would continue to use DRS, including Profile, when Profile became operational. Securities Exchange Act Release No. 42366 (January 28, 2000), 65 Fr 5714 (February 4, 2000).

[12] These members of the DRS Committee also raised several other concerns, including such things as the need for a formal claims process and an education program.

investor's share position, the DRS limited participant will move the investor's position from a position on the DRS limited participant's books to a position in the DTC participant's account at DTC. Using Profile, DTC participants can view the status of all transaction instructions submitted to DRS limited participants for processing. Profile will provide an aging status of up to thirty business days for all instructions that are neither accepted nor rejected (*i.e.*, open items) in an effort to avoid duplicate submissions. After thirty business days, these instructions will be deleted.

A DRS limited participant may also submit an instruction for the movement of an investor's position from the investor's broker-dealer's DTC participant account to a position on its books. For rejected instructions, the DRS limited participant will supply reject codes that will indicate the reason for rejecting. If the DTC participant approves the instruction, then the DTC participant must submit a withdrawal by transfer (''WT'') instruction which will move the investor's position from the DTC participant's account at DTC to an account at the DRS limited participant.[13]

A DRS limited participant submitting an instruction to a DTC participant will agree to a PTS screen-based indemnity substantially in the following form:

(1) Transfer agent represents that it has authority and consent for the request appearing on the following screen from either (a) the registered owner on the transfer agent's records or (b) a third party who has actual authority to act on behalf of the registered owner on the transfer agent's records, and that all information shown is accurate and complete, except that, with respect to the taxpayer identification number included in such information, to the best knowledge of transfer agent, such information is accurate and complete;

(2) Transfer agent indemnifies the participant and its officers, directors, shareholders, employees, agents, representatives, subsidiaries, parents, affiliates, successors and assigns against any breach of such representations in connection with the transaction that is the subject of such request.

In the event that an electronic guarantee program is established, Profile will be able to accommodate it. Until an electronic guarantee program is established, DTC's procedures will reflect the existence of the screen-based indemnity. DTC will not operate a screen-based indemnification and an electronic medallion program simultaneously.

The fees DTC will charge for DRS transactions are the fees agreed upon by the DRS Committee.[14] DTC will charge DTC participants a fee of 31 cents per submitted instruction and charge the receiving DRS limited participant a fee of 9 cents for that instruction.[15] DRS limited participants will be charged 40 cents for each instruction submitted.[16]

II. Comment Letters

The Commission received six comment letters.[17] The SIA, Pershing, and ING Barings support the implementation of Profile and the use of a screen-based electronic medallion until such time as the industry reaches consensus on an alternative electronic guarantee program. These commenters believe Profile will offer investors a secure and efficient electronic facility that will enable them to move their securities in a secure, timely, and efficient manner. The SIA also added that Profile would offer an electronic facility similar to that used for many years by institutional investors and by the mutual fund industry to move securities. Furthermore, the SIA and ING Barings believes that the use of Profile will be critical to further compress the settlement cycle.

ChaseMellon Financial Group and EquiServe Limited Partnership, both commercial transfer agents, support DRS but raised concerns regarding Profile and the use of an electronic indemnification. The commenters contend that Profile will not offer the protection against unauthorized transfers and potential losses arising from such transfers. Both transfer agents note that in existing signature guarantee programs the transfer agent receives physical evidence of the investor's authorization of the transfer, but in DRS transfers using Profile, the transfer agent will transfer the investor's position based solely on an electronic instruction from the broker-dealer. In an effort to resolve these perceived deficiencies, the commenters offer several suggestions including (1) a requirement that guarantors (*i.e.*, either the DTC participant or the DRS limited participant that sends the instruction to move an investor's position to its books) obtain a surety bond similar to those used in current signature guarantee programs and (2) changes in the language used in the screen-based language to provide additional protection for transfer agents. In addition, ChaseMellon believes that the fee structure should be changed to establish parity between the fees paid by DRS limited participants and those paid by DTC participants and should require the initiator of the instruction to pay for all DTC fees.[18] EquiServe also suggested that the claims procedures be in place before Profile is made available.

III. Discussion

Section 17A(b)(3)(F) of the Act[19] requires that the rules of a clearing agency be designed to promote the prompt and accurate clearance and settlement of securities transactions and to remove impediments to and perfect the mechanism of a national system for the prompt and accurate clearance and settlement of securities transactions.[20] As set forth below, the Commission believes that DTC's proposed rule change is consistent with its obligations under section 17A(b)(3)(F).[21]

The primary purpose of Profile is to provide a prompt and accurate mechanism for the transfer of an investor's book-entry position between the investor's broker-dealer and the transfer agent for the issue. Investors desiring to transfer their positions will not longer be subject to a multi-step,

[13] In such a situation, the DTC participant will use an ''S'' indicator with the WT instruction that will instruct the DRS limited participant to establish a DRS account for the investor.

[14] See DRS Committee meeting minutes of January 29, 1998, and October 16, 1998.

[15] The 9-cent fee is to cover DTC's cost of developing a CCF linkage between DTC and DRS limited participants. Securities Transfer Association representatives on the DRS Committee requested the development of a CCF linkage.

[16] There is no CCF development fee when a DRS limited participant submits an instruction to move an investor's position from the books of a broker-dealer to its own books, because the SIA representatives on the DRS Committee have not requested and DTC has not built a CCF linkage between DTC and DTC participants. In addition, DTC participants will be charged the fee for WTs when a share position is moved to a DRS limited participant's records.

[17] *Supra* note 3.

[18] In its letter responding to ChaseMellon's comments, DTC indicated that the DRS Committee agreed upon the fees DTC will charge for instructions through Profile. DTC also indicated the screen-based indemnification language that DTC will use in Profile modeled on the language agreed upon by the DRS Committee. Finally DTC noted that its procedures will accommodate an electronic guarantee program if such a program is established.

[19] 15 U.S.C. 78q–1(b)(3)(F).

[20] The prompt and accurate clearance and settlement of securities transactions includes the transfer of record ownership of securities. 15 U.S.C. 78q–1(a)(1)(A).

[21] The Commission also notes that when enacting Section 17A, Congress set forth its findings that the prompt and accurate clearance and settlement of securities transactions, including the transfer of record ownership, is necessary for the protection of investors; inefficient procedures for clearance and settlement impose unnecessary costs on investors; and that new data processing and communication techniques create the opportunity for more efficient, effective, and safe procedures for clearance and settlement. 15 U.S.C. 78q–1(a)(1)(A), (B), and (C).

paper-based process that is labor intensive and slow and that often results in transfer delays. Using Profile, DTC participants and DRS limited participants will send automated and standardized instructions which should reduce the possibility that an instruction to move an investor's position will contain erroneous or incomplete information. Because Profile will eliminate the need for paper in transferring an investor's positions, Profile should also greatly reduce the possibility that an investor's instructions to move her position will be misplaced or lost.

In order to implement a more efficient manner in which to move an investor's position than is currently available using the paper-based DRS processing, DTC has decided to make Profile fully operational by using a screen-based indemnification until on an electronic guarantee program is established. Although some transfer agents and issuers do not believe that the screen-based indemnification provides sufficient protection against fraudulent transfers or potential losses resulting from such transfers, that view does not appear to be held by all transfer agents, issuers, or broker-dealers. Many industry participants believe that Profile using the screen-based indemnification provides sufficient protection and have expressed their intention to use it.

As the Commission has stated in prior orders dealing with DRS and Profile, participation in DRS by issuers and DRS limited participants is not mandatory.[22] Issues regarding risks and liabilities to issuers or DRS limited participants are internal business issues and should be addressed prior to an issuer's, transfer agent's, or DRS limited participant's decision to participate or participate further in DRS.

V. Conclusion

On the basis of the foregoing, the Commission finds that DTC's proposal to modify Profile to include an electronic screen-based indemnification is consistent with the requirements of the Act and in particular with the requirements of Section 17A of the Act and the rules and regulations thereunder.

It is Therefore Ordered, pursuant to section 19(b)(2) of the Act, that the proposed rule change (File N. SR–DTC–00–04) be and hereby is approved.

[22] *Supra* note 5.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.[23]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 00–10264 Filed 4–24–00; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–42694; File No. SR–NYSE–00–13]

Self-Regulatory Organizations: Notice of Filing and Order Granting Accelerated Approval of Proposed Rule Change by the New York Stock Exchange, Inc. Extending the Pilot Program for Amendments to Exchange Rule 123B Until April 26, 2000

April 17, 2000.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on March 22, 2000, the New York Stock Exchange, Inc. (''NYSE'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'' or ''SEC'') the proposed rule change as described in Items I, II and III below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons and to grant accelerated approval to the proposed rule change.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange requests that the pilot program for commission-free execution of orders received by specialists through the SuperDOT System, and language clarifying the status of an order that is cancelled and replaced, be extended for 60 days.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

On October 4, 1999, the Exchange filed a proposed rule change with the Commission consisting of three amendments to Exchange Rule 123b. One amendment provided for the commission-free execution of all orders received by the Exchange specialists through the SuperDOT system if such orders were executed within five minutes. A second amendment added language to Rule 123B to clarify that if an order placed with the specialist is cancelled and replaced, the replacement order is considered a new order for purposes of the Rule.[3] The Commission approved these changes as a pilot program through February 26, 2000.

The Exchange requests that the pilot be extended for 60 days as it relates to the commission-free policy and the provision in Rule 123B relating to cancelled and replaced orders. The Exchange instituted the pricing initiative of commission-free executions, in conjunction with the Exchange's specialist community, effective with trades executed on December 29, 1999. To date, the procedure has worked well. The Exchange has not received any complaints concerning this policy. As to that portion of Rule 123B on cancelled and replaced orders, the Exchange is not aware of any problems associated with the clarifying language.

2. Statutory Basis

The Exchange believes that the basis under the Act for the proposed rule change is the requirement under Section 6(b)(5)[4] that the Exchange have rules that are designed to promote just and equitable principles of trade, that facilitate transactions in securities, that remove impediments to and perfect the mechanism of a free and open market and a national market system and, in general, to protect investors and the public interest. The Exchange also believes that the basis under the Act for

[23] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] The third proposed change to Rule 123B related to reports of executions within two minutes for orders stopped by specialists. The Exchange is not requesting extension of this provision at this time. *See* letter from James E. Buck, Senior Vice President and Secretary, NYSE, to Richard Strasser, Assistant Director, Division of Market Regulation, SEC, dated February 25, 2000. The Commission published notice of these two amendments to Rule 123B. *See* Exchange Act Release No. 42572 (March 23, 2000), 65 FR 17325 (March 31, 2000) (SR–NYSE–00–09).

[4] 15 U.S.C. 78f(b)(5).

the proposed rule change is the requirement under Section 11A(a)(1)(C)[5] which states that it is in the public interest and appropriate for the protection of investors and the maintenance of fair and orderly markets to assure economically efficient execution of securities transactions, fair competition among brokers and dealers, among exchange markets, and between exchange markets and markets other than exchange markets.

B. Self-Regulatory Organization's Statement on Burden on Competition

These enhancements will provide the Exchange the opportunity to compete more effectively for order flow with other marketplaces. Thus, the Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

The Exchange reviewed the proposed rule change with members and organizations representing various constituencies of the Exchange and the responses to the proposed rule changes were positive. The Exchange has not otherwise solicited, and does not intend to solicit, comments on this proposed rule change. The Exchange has not received any written comments from members or other interested parties.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange, and, in particular, with the requirements of Section 6(b) of the Act.[6] Eliminating specialist commissions on orders executed within five minutes will improve the cost competitiveness of Exchange executions, which the Exchange believes will inure to the benefit of investors. Additionally, this may assist broker-dealers in fulfilling their best execution duties for their customers. The Commission notes that the proposed rule change also extends provisions of a previously approved pilot program.[7]

The Commission finds good cause for approving the proposed rule change prior to the thirtieth day after the date of publication of notice thereof in the **Federal Register**. Approval of the proposal will allow the Exchange to continue the pilot program. Therefore, the Commission believes it is consistent with Section 6(b)(5) and Section 11A(a)(1)(C) of the Act[8] to grant accelerated approval to the proposed rule change.[9]

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying at the Commission's Public Reference Room, located at the above address. Copies of such filing will also be available for inspection and copying at the principal office of the Exchange. All submissions should refer to File No. SR–NYSE–00–13 and should be submitted by May 16, 2000.

V. Conclusion

It is Therefore Ordered, pursuant to Section 19(b)(2) of the Act,[10] that the proposed rule change (SR–NYSE–00–13) extending the pilot program for amendments to Exchange Rule 123B until April 26, 2000 is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[11]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 00–10263 Filed 4–24–00; 8:45 am]

BILLING CODE 8010–01–M

[5] 15 U.S.C. 78k–1(a)(1)(C).

[6] 15 U.S.C. 78f(b).

[7] In approving this rule change, the Commission has considered its impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[8] 15 U.S.C. 78k–1(a)(1)(C).

[9] 15 U.S.C. 78f(b)(5) and 78s(b)(2).

[10] 15 U.S.C. 78s(b)(2).

[11] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–42700; File No. SR–Phlx–99–39]

Self-Regulatory Organizations; Philadelphia Stock Exchange, Inc.; Order Approving Proposed Rule Change Regarding Specialist Enhanced Participation

April 18, 2000.

I. Introduction

On October 4, 1999, the Philadelphia Stock Exchange, Inc. (''Exchange'' or ''Phlx'') submitted to the Securities and Exchange Commission (''Commission''), pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4 thereunder,[2] a proposed rule change seeking to amend Exchange Rule 1014, ''Obligations and Restrictions Applicable to Specialists and Registered Options Traders,'' and its corollary Option Floor Procedure Advice B–6 to revise the enhanced participation available to Exchange specialists. The proposal was amended on November 4, 1999.[3] Notice of the proposed rule change and Amendment No. 1 appeared in the **Federal Register** on November 30, 1999.[4] The Commission received no comments on the proposal. This order approves the proposed rule change, as amended.

II. Description of the Proposal

On August 26, 1994, the Commission approved the Exchange's proposal to adopt an enhanced participation for Exchange specialists in equity options.[5] The enhancement, or ''enhanced parity split,'' provides Exchange specialists with a greater participation in parity trades than the specialists would otherwise be entitled to receive.

On November 30, 1994, the Commission approved the Exchange's proposal to make the enhanced parity split available to index option specialists.[6] The enhanced parity split was later revised with respect to

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] In Amendment No. 1, the Exchange made technical changes to the proposal. *See* Letter from Nandita Yagnik, Phlx, to Richard Strasser, Assistant Director, Division of Market Regulation, Commission, dated November 3, 1999 (''Amendment No. 1'').

[4] *See* Securities Exchange Act Release No. 42161 (November 19, 1999), 64 FR 66958.

[5] *See* Securities Exchange Act Release No. 34606 (August 26, 1994), 59 FR 45741 (September 2, 1994). Initially , the enhanced parity split was approved as a one year pilot expiring August 26, 1995.

[6] *See* Securities Exchange Act Release No. 35028 (November 30, 1994), 59 FR 63151 (December 7, 1994).

situations where less than three controlled accounts are on parity with a specialist.[7] The enhanced parity split was renewed unaltered and on a continuing pilot basis on three subsequent occasions.[8] Thereafter, the enhanced parity split was extended until December 31, 1998, and revised so that it would apply to: (1) All index options; (2) 50% of each specialist's equity options; and (3) all new options allocated to a specialist during the year. In addition, specialists were permitted to revise the list of eligible equity options on a quarterly basis, instead of annually.[9] Finally, in July 1999, the enhanced parity split was permanently approved.[10]

The enhanced parity split works as follows: when an equity or index option specialist is on parity with one controlled account [11] and an order for more than five contracts comes into the crowd, the specialist will receive 60% of the contracts and the controlled account will receive 40%. When the specialist is on parity with two controlled accounts and the order is for more than five contracts, the specialist will receive 40% of the contracts and each controlled account will receive 30%. When the specialist is on parity with three or more controlled accounts and the order is for more than five contracts, the specialist will be counted as two crowd participants when allocating the contracts. In any of these situations, if a customer order is on parity, the customer will not be disadvantaged by receiving a lesser allotment than any other crowd participant, including the specialist.

Thus, a customer on parity is assured a minimum participation that is equal to the participation of the specialist.[12]

The Exchange now proposes to revise the manner in which the enhanced parity split operates only in those cases where the specialist is on parity with three or more controlled accounts and the order is for more than five contracts. Under the proposal, the specialist will receive 30% of the contracts instead of being counted as two crowd participants in determining the number of contracts the specialist is entitled to receive.

III. Discussion

For the reasons discussed below, the Commission finds that the proposed rule change is consistent with the Act and the rules and regulations under the Act applicable to a national securities exchange. In particular, the Commission believes the proposed rule change is consistent with the section 6(b)(5) [13] requirements that the rules of an exchange be designed to promote just and equitable principles of trade, prevent fraudulent and manipulative acts and practices, and protect investors and the public interest.[14] The Commission also finds that the proposal may serve to remove impediments to and perfect the mechanism of a free and open market by helping the Exchange to attract and retain specialist units.

When an equity or index option specialist is on parity with three or more controlled accounts and the order is for more than five contracts, the proposal gives the specialist 30% of the contracts, rather than counting the specialist as two crowd participants. The proposal will significantly increase the specialist's enhanced participation when the specialist is on parity with five or more controlled accounts. Under the proposal, however, when the specialist is on parity with three or four controlled accounts, the specialist's enhanced participation will be reduced.[15] The Exchange recognizes that the proposal will reduce the number of contracts that a specialist will receive when the specialist is on parity with three or four controlled accounts.[16] The Exchange, however, believes that the proposal will provide a more equitable treatment to all specialists such that specialists of both small and large crowds will receive a significant enhanced participation when there are five of more controlled accounts on parity.[17]

The Commission recognizes that the purpose of the enhanced parity split is to encourage specialists to make deep and liquid markets to attract order flow to the Exchange. The Commission has previously noted that specialists have responsibilities and costs that crowd participants do not share, such as the staff costs associated with the requirement to continually update and disseminate quotes.[18] As a result, the Commission believes it is reasonable for the Exchange to grant certain advantages to specialists, such as the enhanced parity split, to attract and retain well capitalized specialists at the Exchange. As long as these advantages do not unreasonably restrain competition and do not harm investors, the Commission believes that the granting of such benefits to specialists, in general, is within the business judgment of the Exchange. In this regard, the Commission believes that it is reasonable for the Exchange to revise the enhanced parity split as proposed.

The Commission believes that the proposal should provide reasonable benefits to specialists, given their heightened responsibilities and costs. The Commission believes that the approval of the proposal is consistent with the Act because the newly revised enhanced parity split should not unreasonably restrain competition and should not result in harm to investors. The Commission notes that customer orders on parity will continue to be assured a minimum participation equal to any other crowd participant, including the specialist.

IV. Conclusion

It Is Therefore Ordered, pursuant to section 19(b)(2) of the Act,[19] that the

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[7] *See* Securities Exchange Act Release No. 35429 (March 1, 1995), 60 FR 12802 (March 8, 1995).

[8] *See* Securities Exchange Act Release No. 36122 (August 18, 1995), 60 FR 44530 (August 28, 1995); 37254 (August 5, 1996), 61 FR 42080 (August 13, 1996); and 38924 (August 11, 1997), 62 FR 44160 (August 19, 1997).

[9] *See* Securities Exchange Act Release No. 39401 (December 4, 1997), 62 FR 65300 (December 11, 1997).

[10] *See* Securities Exchange Act Release No. 41588 (July 1, 1999), 64 FR 37185 (July 9, 1999. The Exchange also received approval to give specialists an enhanced parity split when they develop and trade a new product (''New Products Split''). Under the New Products Split, when the specialist is on parity with three or more controlled accounts, the specialist receives 40% of the contracts and the controlled accounts receive the remaining 60%. When the specialist is on parity with less than three controlled accounts in the crowd, the specialist receives 60% of the contracts and the controlled accounts receive 40%. In either of these situations, if a customer is on parity, the customer may not receive a lesser allotment than any other crowd participant including the specialist. *Id.*

[11] A controlled account is defined as ''any account controlled by or under common control with a member broker-dealer.'' Customer accounts, which include discretionary accounts, are defined as all accounts other than controlled accounts. *See* Exchange Rule 1014(g)(i).

[12] The application of this enhanced parity split is mandatory. Therefore, with respect to any equity or index option transaction that implicates the enhanced parity split, the specialist is required to accept the preferential allocation and may not decline the enhancement. If an equity or index option trade is on parity, but not subject to the enhanced parity split (*i.e.,* the order is for five or less contracts), the Exchange specialist is required to allocate the contracts according to the Exchange's priority and parity rules. *See* Exchange Rule 119, ''Precedence of Highest Bid,'' and Exchange Rule 120, ''Precedence of Offers at Same Price.''

[13] 15 U.S.C. 78f(b)(5).

[14] In approving this proposed rule change, the Commission has considered the proposal's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[15] For example, under the current enhanced participation if there is an initiating order of fifty contracts, and three controlled accounts are on parity, the Specialist will receive twenty contracts and the controlled accounts will each receive ten contracts. In contrast, under the proposal the specialist will only receive fifteen contracts.

[16] *See* Amendment No. 1, *supra* note 3.

[17] *Id.*

[18] *See, e.g.,* Security Exchange Act Release No. 35177 (December 29, 1994), 60 FR 2419 (January 9, 1995).

[19] 15 U.S.C. 78S(B)(2).

proposed rule change (SR–Phlx–99–39), as amended, is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[20]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 00–10258 Filed 4–24–00; 8:45 am]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–42699; File No. SR–Phlx–99–04]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the Philadelphia Stock Exchange, Inc. Relating to Enhanced Specialists Participation in Wheel Trades

April 18, 2000.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on June 14, 1999, the Philadelphia Stock Exchange, Inc. (''Phlx'' or ''Exchange''), filed with the Securities and Exchange Commission (''SEC'' or ''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Phlx. The proposed rule change was filed by the Exchange as a ''non-controversial'' rule change under Rule 19b–4(f)(6)[3] under the Act. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Phlx proposal amends Options Floor Procedure Advise F–24, AUTO–X Contra-Party Participation (The Wheel) (''Advise F–24''), as it relates to Enhanced Specialist Participation in Wheel trades. Specifically, the proposal modifies paragraph (e) to state that where the Enhanced Specialist Participation of Rule 1014(g)(ii) applies, the specialist shall receive an enhanced participation ''substantially equivalent to twice the number of contracts as other crowd participants,'' rather than ''twice the contracts,'' as the text of Advise F–24 previously stated.

The proposal retains the provision that the Enhanced Specialist Participation on the Wheel requires the unanimous consent of Wheel participants, but adds the requirement that it be approved by the Options Committee Chairman or his designee.

In addition, the proposal amends paragraph (e) to clarify that the Wheel will rotate in increments depending upon the size of the AUTO–X guarantee, not the size of each individual AUTO–X order.[4]

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Phlx includes statements concerning the purpose of and basis for the proposed rule change and discussed any comment it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Phlx has prepared summaries, set forth in Section A, B, and C below, of the most significant aspects of such statement.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. *Purpose*

The Wheel is an automated mechanism for assigning trade participation among specialists and Registered Options Traders (''ROTs'') on a rotating basis, as contra-side participants to AUTO–X orders. AUTO–X is the automatic execution feature of the Exchange's Automated Options Market (''AUTOM'') system,[5] which provides customers with automatic execution of eligible option orders at displayed markets.

The purpose of the Wheel is to increase the efficiency of order execution through AUTO–X by including floor traders in the automated assignment of contra-parties to incoming AUTO–X orders. Thus, the Wheel is intended to make AUTO–X more efficient, as contra-side participation is assigned automatically, and no longer entered manually. The Exchange's detailed Wheel provisions appear as Advise F–24.[6]

The Enhanced Specialist Participation is a program whereby an equity or index option specialist receives an ''enhanced'' or additional ''split,'' meaning a higher participation in the execution of an order.[7] The enhanced parity split applies to: (i) All index options; (ii) all new option classes allocated to a specialist during the year; and (iii) 50% of a specialist's equity option issues, which issues are designated by the specialist and approved by the Exchange's Allocation, Evaluation, and Securities Committee. The program also permits specialists to revise the list of eligible equity options (*i.e.,* the designated equity options for which the specialist is entitled to receive the enhanced parity split) on a quarterly basis. Pursuant to Rule 1014(g)(ii), the enhanced split applies in those situations where an equity or index option specialist is on parity with one or more controlled accounts[8] for orders involving more than five contracts.

As of the date this proposed change to the Wheel allocation was filed, the enhanced specialist split was defined by Rule 1014(g)(ii) as follows: when the specialist was on parity with one controlled account, the specialist received 60% of the contracts and the controlled account received the remaining 40%. When the specialist was on parity with two controlled accounts, the specialist received 40% of the contracts and each controlled account received 30%; and when the specialist was on parity with three or more controlled accounts, the specialist was counted as two crowd participants for purposes of allocating the contracts. In all of these situations, if a customer is on parity, the customer could not receive a lesser allotment than any other crowd participant, including the specialist.

In August of 1998, the Phlx amended Advice F–24 to allow specialists to receive twice the number of contracts as other Wheel participants to achieve an enhanced participation consistent with the provisions of Phlx Rule 1014(g)(ii). The enhanced participation was implemented in the form of an

[20] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 17 CFR 240.19b–4(f)(6).

[4] *See* Securities Exchange Act Release No. 37977 (November 26, 1996), 61 FR 63889 (December 2, 1996.)

[5] AUTOM is an electronic order routing and delivery system for option orders.

[6] *See* Securities Exchange Act Release No. 35033 (November 30, 1994), 59 FR 63152 (December 7, 1994).

[7] The program was initially approved in 1994 as a one year pilot. *See* Securities Exchange Act Release No. 34606 (August 26, 1994), 59 FR 45741 (September 2, 1994). It has subsequently been extended and revised. *See* Securities Exchange Act Release Nos. 35028 (November 30, 1994), 59 FR 63151 (December 7, 1994); 35429 (March 1, 1995), 60 FR 12802 (March 8, 1995); 36122 (August 18, 1995), 60 FR 44530 (August 28, 1995); 37254 (August 5, 1996), 61 FR 42080 (August 13, 1996); 38924 (August 11, 1997), 62 FR 44160 (August 19, 1997); 39401 (December 4, 1997), 62 FR 65300 (December 11, 1997); and 40876 (December 31, 1998), 64 FR 1849 (January 12, 1999). The Commission granted the pilot permanent approval in July 1999. *See* Securities Exchange Act Release No. 41588 (July 1, 1999), 64 FR 37185 (July 9, 1999).

[8] Pursuant to Rule 1014(g)(i), a controlled account includes any account controlled by or under common control with a member broker-dealer.

additional sign-on for the specialist on the Wheel rotation.[9]

Thereafter, however, the Phlx learned that due to systems configurations that could not be altered without significant programming change, the additional specialist sign-on did not result in the specialist receiving twice the number of contracts. More specifically, the system was treating the second sign-on like an ROT sign-on as opposed to that of a specialist. As a result, because of the many variables that determine how contracts are allocated among participants, the specialist would not always receive twice the number of contracts for trade.

Consequently, the Phlx proposed to amend Advice F–24 to delete the language stating that the specialist will receive twice the number of contracts. Instead, under the new language of the proposal, the specialist will receive an enhanced participation that is *substantially equivalent to* twice the number of contracts as other crowd participants.[10] Actual participation will be determined by a number of factors, including the number of participants on the Wheel, and the AUTO–X guarantee for the particular issue.

The Phlx represents that although reconfiguring the Wheel to allow a second specialist sign-on would involve a significant programming change, reconfiguring the specialist frequency and the number of contracts received per participation can be achieved without a significant programming change. Thus, the Phlx's Regulatory Services Department (or other Exchange personnel charged with this function) will configure specialist Wheel participation under the proposal on a crowd-by-crowd basis based upon the factors above.

The Phlx further represents that it will monitor these factors and the actual participation levels on a monthly basis to ensure that specialist Wheel enhanced participation in fact remains at a level substantially equivalent to twice the number of contracts compared to other participants on the Wheel.

For example, if there is a specialist and three ROTs for a particular issue, and the AUTO–X guarantee is 25 contracts (such that each order will be allocated 5 contracts to each Wheel participant),[11] Regulatory Services personnel will configure the Wheel such that the specialist would participate after two ROTs (*i.e.,* specialist, first ROT, second ROT, specialist, third ROT, first ROT, specialist). At the end of the trading day, the specialist should receive an enhanced split approximately equal to twice the number of contracts as other Wheel participants.[12]

Enhanced participation on the Wheel will continue to be contingent upon unanimous consent of the Wheel participants in a particular option issue, a provision intended to ensure implementation only where the ROTs on the Wheel agree that more participation for the specialist and hence, less for the ROTs, is fair and appropriate. The proposal adds a new clause requiring the approval of the Chairman of the Options Committee or his designee.

The proposal also amends the text of Advice F–24 to clarify that the Wheel will rotate in increments depending upon the size of the AUTO–X guarantee, not the size of each individual AUTO–X order.

2. Statutory Basis

The Phlx believes that the rule change is consistent with section 6 of the Act[13] in general, and with section 6(b)(5) of the Act,[14] in particular, which requires that the Exchange's rules be designed to promote just and equitable principles of trade, prevent fraudulent and manipulative acts and practices, remove impediments to and perfect the mechanism of a free and open market and a national market system, as well as protect investors and the public interest.

The purpose of Advice F–24 is to fairly and efficiently extend the enhanced specialist split to the Wheel. In originally adopting the enhanced specialist split, the Exchange identified the need to attract new specialist units as well as retain and encourage current specialist units to vigorously trade existing options and aggressively seek and apply for newly allocated options. The Phlx believes the proposed rule change furthers these purposes.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Phlx does not believe that the proposed rule change will impose any inappropriate burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were either solicited or received.

III. Date of Effectiveness of the Proposed Rule Change

The foregoing proposed rule change has become effective pursuant to section 19(b)(3)(A) of the Act[15] and Rule 19b–4(f)(6) thereunder[16] because the proposed rule change (1) Does not significantly affect the protection of investors or the public interest; (2) does not impose any significant burden on competition; and (3) was to become operative more than 30 days from the date on which it was filed, and the Phlx provided the Commission with written notice of its intent to file the proposed rule change at least five days prior to the filing date.[17]

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether it is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written

[9] Although, as described above, Rule 1014(g)(ii)) implements a three-tiered scheme, allocating 60% or 40% of contracts to the specialist when one or two other controlled accounts are on parity, respectively, the thrust of the rule resided in the ''two-for-one'' allocation of its third tier, applied when three or more other controlled accounts were on parity. Due to systems reasons, this two-for-one enhanced participation was adopted for all trades assigned by the Wheel, regardless of the number of participants on parity. *See* Securities Exchange Act Release No. 40370 (August 27, 1998), 63 FR 47077 (September 3, 1998). *See also infra,* note 10.

[10] The Commission notes that the Exchange filed a proposed rule change to amend Rule 1014(g)(ii)—the predicate of Advice F–24—to state that when the specialist is at parity with three or more controlled accounts, the enhanced specialist participation will be 30%, rather than ''two-for-one.'' *See* Securities Exchange Act Release No. 42161 (November 19, 1999), 64 FR 66958 (November 30, 1999) (File No. SR–Phlx–99–39). The Commission has today approved this other proposed rule change. *See* Securities Exchange Act Release No. 34–42700, April 18, 2000. The Commission notes, however, that enhanced participations provided to specialists for Wheel trades will continue to be governed by the standard approved in this Order (*i.e.,* substantially equivalent to twice the number of contracts as other crowd participants). The Phlx may consider in the future whether to propose a further change to Advice F–24 to apply the new, 30% enhanced specialist split to Wheel trades, as well. Telephone conversation between Nandita Yagnik, the Phlx, and Michael Loftus and Ira Brandriss, Division of Market Regulation, the Commission, January 6, 2000.

[11] *See* Advice F–24(e), which specifies that for AUTO–X orders consisting of 11 to 25 contracts, minimum allocations for Wheel participants must be approximately 5 contracts.

[12] Attached as Exhibit C to the Phlx's filing, which is available for public inspection at the Commission's Public Reference Room, is a chart which shows how the enhanced split will operate for different size trading crowds and with different AUTO–X guarantees.

[13] 15 U.S.C. 78f.

[14] 15 U.S.C. 78f(5).

[15] 15 U.S.C. 78s(b)(3)(A).

[16] 17 CFR 240.19b–4(f)(6).

[17] In reviewing this proposal, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the Exchange. All submissions should refer to File No. SR–Phlx–99–04 and should be submitted May 16, 2000.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[18]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 00–10259 Filed 4–24–00; 8:45 am]

BILLING CODE 8010–01–M

DEPARTMENT OF STATE

[Public Notice 3297]

Culturally Significant Objects Imported for Exhibition Determinations: ''Arms and Armor of 17th Century Virginia''

AGENCY: Department of State.

ACTION: Notice.

SUMMARY: Notice is hereby given of the following determinations: Pursuant to the authority vested in me by the Act of October 19, 1965 (79 Stat. 985, 22 U.S.C. 2459), the Foreign Affairs Reform and Restructuring Act of 1998 (112 Stat. 2681, *et seq.*), Delegation of Authority No. 234 of October 1, 1999, and Delegation of Authority of October 19, 1999, I hereby determine that the object to be included in the exhibition ''Arms and Armor of 17th Century Virginia,'' imported from abroad for the temporary exhibition without profit within the United States, is of cultural significance. This object is imported pursuant to a loan agreement with a foreign lender. I also determine that the exhibition or display of the exhibit object at the Jamestown Settlement Museum, Williamsburg, VA from on or about May 1 to October 31, 2000 is in the national interest. Public Notice of these Determinations is ordered to be published in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: For further information, including a list of exhibit objects, contact Jacqueline Caldwell, Attorney-Adviser, Office of the Legal Adviser, U.S. Department of State (telephone: 202/619–6982). The address is U.S. Department of State, SA–44; 301 4th Street, SW., Room 700, Washington, DC 20547–0001.

Dated: April 18, 2000.

William P. Kiehl,

Acting Assistant Secretary for Educational and Cultural Affairs, Department of State.

[FR Doc. 00–10284 Filed 4–24–00; 8:45 am]

BILLING CODE 4710–08–U

DEPARTMENT OF STATE

[Public Notice Number 3278]

Notice of Meetings; International Telecommunication Advisory Committee (ITAC) and International Telecommunication Advisory Committee—Telecommunication Standardization Sector (ITAC–T)

The Department of State announces meetings of the U.S. International Telecommunication Advisory Committee (ITAC), and the U.S. International Telecommunication Advisory Committee—Telecommunication Standardization (ITAC–T) National Committee. The purpose of the Committees is to advise the Department on policy and technical issues with respect to the International Telecommunication Union and international telecommunication standardization. Except where noted, meetings will be held at the Department of State, 2201 C Street, NW., Washington, DC.

The ITAC will meet from 10 to noon on April 26, 2000, at the Department of State. The agenda consists of a debrief of the meeting of the working group on ITU reform and planning for preparations for the ITU Council meeting in July 2000.

The ITAC–T will meet from 9:30 to 4 on April 27, 2000, at the Telecommunication Industry Association offices on Wilson Boulevard, Arlington, VA, and May 17, 2000 (at a location to be determined). The agendas will both consist of development of recommendations for the ITU–T Study Programme for the next study period, positions on the alternative approval process, and other preparations for the June ITU Telecommunication Sector Advisory Group (TSAG) and the October World Telecommunication Sector Assembly (WTSA). We regret the short notice due to unanticipated schedule changes for the ITAC Chairman.

Members of the general public may attend these meetings. Entrance to the Department of State is controlled; people intending to attend any of the ITAC meetings should send a fax to (202) 647–7407 not later than 24 hours before the meeting. This fax should display the name of the meeting (ITAC T, or US Study Group A or D, and date of meeting), your name, social security number, date of birth, and organizational affiliation. One of the following valid photo identifications will be required for admission: US driver's license, passport, US Government identification card. Enter from the C Street Lobby; in view of escorting requirements, non-Government attendees should plan to arrive not less than 15 minutes before the meeting begins. Actual room assignments may be determined at the lobby or by calling the Secretariat at 202 647–0965/2592.

Attendees may join in the discussions, subject to the instructions of the Chair. Admission of members will be limited to seating available.

Dated: April 19, 2000.

Julian E. Minard,

Secretariat to the ITAC–T, Department of State.

[FR Doc. 00–10272 Filed 4–20–00; 2:33 pm]

BILLING CODE 4710–45–U

DEPARTMENT OF TRANSPORTATION

Applications of Trans Borinquen Air, Inc. for Issuance of New Certificate Authority

AGENCY: Department of Transportation.

ACTION: Notice of Order to Show Cause (Order 2000–4–20); Dockets OST–99–6173 and OST–00–6777.

SUMMARY: The Department of Transportation is directing all interested persons to show cause why it should not issue orders (1) finding that Trans Borinquen Air, Inc., fails to meet the U.S. citizenship requirements of 49 U.S.C. 41102 and 40102(a)(15), and (2) denying it certificates to engage in interstate and foreign charter all-cargo transportation.

DATES: Persons wishing to file objections should do so no later than May 3, 2000.

ADDRESSES: Objections and answers to objections should be filed in Dockets OST–99–6173 and OST–00–6777 and addressed to Department of Transportation Dockets (SVC–124, Room PL–401), Department of Transportation, 400 Seventh Street, SW., Washington, DC 20590 and should be served upon the parties listed in Attachment A to the order.

FOR FURTHER INFORMATION CONTACT: Mr. Galvin Coimbre, Air Carrier Fitness

[18] 17 CFR 200.30–3(a)(12).

Division (X–56, Room 6401), Department of Transportation, 400 Seventh Street, SW., Washington, DC 20590, (202) 366–5347.

Dated: April 19, 2000.

Robert S. Goldner,

Acting Deputy Assistant Secretary for Aviation and International Affairs.

[FR Doc. 00–10244 Filed 4–24–00; 8:45 am]

BILLING CODE 4910–62–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

[Docket No. 29088]

Airport Privatization Pilot Program

AGENCY: Federal Aviation Administration (FAA) DOT.

ACTION: Available of record of decision for the participation of Stewart International Airport, Newburg, New York, in the airport privatization pilot program.

SUMMARY: The Federal Aviation Administration (FAA) has approved the final application by the State of New York for Stewart International Airport (SWF) as one of the five airports eligible to participate in the airport privatization pilot program. An exemption is issued from certain provisions of 49 U.S.C. section 47134(b).

49 U.S.C. section 47134 establishes an airport privatization pilot program and authorizes the Department of Transportation to grant exemptions from certain Federal statutory and regulatory requirements for up to five airport privatization projects. The application procedures require the FAA to approve the final application and issue an exemption under 49 U.S.C. section 47134 after the execution of all documents necessary to fulfill the requirements of section 47134 and other laws and regulation within the FAA's jurisdiction.

DATES: The FAA Record of Decision was signed on March 31, 2000. The New York State Department of Transportation transferred Stewart International Airport to SWF Airport Acquisition, Inc. under a 99 year lease agreement on April 1, 2000.

ADDRESSES: The Record of Decision is available for public review in the Federal Aviation Administration, Office of Chief Counsel, Attention: Rules Docket (AGC–200), Docket No. 29088, 800 Independence Avenue SW., Washington, DC 20691.

FOR FURTHER INFORMATION CONTACT: Kevin C. Willis, Compliance Specialist (AAS–400), (202–267–8741) Airport Compliance Division, Office of Airport Safety and Standards, Federal Aviation Administration, 800 Independence Ave. SW., Washington, DC 20591.

SUPPLEMENTARY INFORMATION:

Introduction and Background

Section 149 of the Federal Aviation Administration Authorization Act of 1996, Pub. L. No. 104–264 (October 9, 1996) (1996 Reauthorization Act) added a new section § 47134 to Title 49 of the U.S. Code. Section 47134 authorizes the Secretary of Transportation, and through delegation, the FAA Administrator, to exempt a sponsor of a public use airport that has received Federal assistance from certain Federal requirements in connection with the privatization of the airport by sale or lease to a private paty. Specifically, the Administrator may exempt the sponsor from all or part of the requirements to use airport revenues for airport-related purposes (upon approval of 65 percent of the air carriers serving the airport and having 65 percent of the landed weight), to pay back a portion of Federal grants upon the sale of an airport, and to return airport property deeded by the Federal Government upon transfer of the airport. The Administrator is also authorized to exempt the private purchaser or lessee from the requirement to use all airport revenues for airport-related purposes, to the extent necessary to permit the purchaser or lessee to earn compensation from the operations of the airport. (No air carrier approval is necessary for the latter exemption.)

On September 16, 1997, the FAA issued a notice of procedures to be used in applications for exemption under the Airport Privatization Pilot Program (62 FR 48693). The notice of procedures and its public comments are available for review in FAA Rules Docket No. 28895.

On December 16, 1997, the FAA issued a notice accepting for review the Stewart International Airport preliminary application (62 FR 65845, Docket Number 29088). This action permitted NYSDOT to select a private operator, negotiate an agreement, and submit a final application to the FAA for exemption. The filing date of the NYSDOT preliminary application was October 23, 1997, the date the FAA received the preliminary application. On January 10, 1999, NYSDOT filed its final application for the privatization of SWF. The final application provides for a 99-year lease agreement between NYSDOT and Stewart Airport Acquisition, Inc. (SWFAA) a wholly owned subsidiary of National Express Group. In return for the right to lease the airport, National Express Group (NEG) and its subsidiary will pay NYSDOT a $35 million payment and beginning in the tenth year of the agreement provide annual payments totaling five percent of gross airport income. As a part of its proposal SWFAA proposes a $48.6 million capital improvement program over the initial five-year period with a proposed rate of return ranging between 3% and 35% on the private operator's contribution. SWFAA will provide marketing support and all management, administrative and operational personnel to operate the airport.

On February 16, 1999, in an effort to clarify certain parts of the application, FAA staff requested responses to 5 questions from the NYSDOT and to 12 questions from NEG. Ten of the questions posed to the private operator required it to utilize confidential business or financial information in order to respond. In accordance with the airport privatization pilot program application procedures, (62 FR 48693, 48706, September 16, 1997), NEG requested confidential treatment of this information. As a result, the responses to these 10 questions were not available for public comment. Copies of the 17 questions and the 7 responses available for public view and comment are included in Attachment 15 of the sponsor's final application for review.

After reviewing this information, the FAA determined that the application was substantially complete.

On April 8, 1999, the Federal Aviation Administration published in the **Federal Register** a Notice of Receipt of Final Application of Stewart International Airport, Newburgh, New York; Request for Comments under the Airport Privatization Pilot Program (64 FR 17208). The notice made known the availability of the final application for Stewart International Airport for public comment and review. Comments were originally requested for submittal by June 7,1 999. The comment period was later extended to June 28, 1999, following a public meeting held on June 12, 1999, at the request of several members of Congress to allow the FAA to receive testimony from the local community and elected officials. The FAA also solicited and received comments at the public meeting held on June 12, 1999. Verbatim transcripts of the meeting have been included in the docket of this proceeding.

The Agency received 96 comments in response to the notice. The FAA response to the comments received is incorporated in the Record of Decision.

On March 30, the FAA signed a Record of Decision approving the participation of the airport in the Pilot Program, and issued an Airport

Operating Certificate under 14 CFR part 139 to SWF Airport Acquisition, Inc.

Issued in Washington, DC on April 17, 2000.

David L. Bennett,

Director, Office of Airport Safety and Standards.

[FR Doc. 00–10219 Filed 4–24–00; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Transit Administration

Supplemental Environmental Impact Statement on the Buffalo Inner Harbor Project, New York

AGENCY: Federal Transit Administration, DOT.

ACTION: Notice of Intent to prepare a Supplemental Environmental Impact Statement.

SUMMARY: The Federal Transit Administration (FTA) is issuing this notice to advise the public and interested agencies that a Supplemental Environmental Impact Statement (SEIS) will be prepared by the FTA and the Niagara Frontier Transportation Authority (NFTA) on the Buffalo Inner Harbor Project. This Supplemental EIS is in response to a court order and is limited in scope to the issue of historic preservation. The SEIS will address events and information that became available subsequent to the final EIS (FEIS), which was issued February 12, 1999.

The Preservation Coalition filed a civil action on October 6, 1999, in the United States District Court for the Western District of New York under civil action number 99–CV–745S against FTA, NFTA, the New York State Thruway Authority, Empire State Development Corporation (ESDC), and the New York State Office of Parks, Recreation, and Historic Preservation. ESDC is the project sponsor. The Preservation Coalition challenged the Buffalo Inner Harbor Project on environmental and historic preservation grounds. On March 31, 2000, District Court Judge William M. Skretny ordered that a SEIS be prepared to consider the information learned during archaeological investigations conducted after the FEIS.

DATES: The court established a compressed timetable for completion of a draft and final SEIS. A draft SEIS will be prepared by May 10, 2000. Public comments will be solicited, and a public hearing will be held, on the SEIS between May 20, 2000, and May 31, 2000. A final SEIS will be prepared by June 30, 2000. FTA will issue a supplemental Record of Decision (ROD) by July 10, 2000.

ADDRESSES: Correspondence requesting notification of the availability of the draft SEIS and the public hearing date and location, or commenting on the draft SEIS should be addressed to Vito Sportelli, NFTA, 181 Ellicott Street; Buffalo, New York 14203.

FOR FURTHER INFORMATION CONTACT: Anthony G. Carr, FTA Region II, One Bowling Green, Room 429; New York, New York 10004. Telephone (212) 668–2170.

SUPPLEMENTARY INFORMATION: The Buffalo Inner Harbor Project involves reconfiguring a segment of the Buffalo Inner Harbor shoreline into three areas to accommodate a commercial harbor basin with three piers, a working canal slip and a naval vessel basin. The Project also involves intermodal transportation components, including the construction of a public esplanade to provide a continuous transportation link and public access to the waterfront, connection of existing pedestrian and bicycle path systems and provision of opportunities for private development.

The State Historic Preservation Officer (SHPO) opined in June 1998 that the Buffalo Inner Harbor Project would have no adverse effect on cultural resources in or eligible for inclusion on the National Register of Historic Places. SHPO also called for a Stage III archaeological excavation of the Commercial Slip. The Commercial Slip is a former slip that connected the Erie Canal with the Buffalo River. It was filled in 1926 and is presently used as a right-of-way for the Hamburg Drain. During the Stage III excavation remains of the Commercial Slip wall were discovered, and as a result, the SHPO determined in June 1999 that the Commercial Slip wall met the criteria for inclusion in the National Register, and subsequently, the SHPO determined that exposure and public display of the Commercial Slip wall is not feasible and that the wall should be covered over as a means of preservation.

The court ordered that the SEIS must address and discuss events that occurred and information that became available subsequent to the final EIS which will affect environmental issues in a significant manner or to a significant extent not already considered in the final EIS. Specifically, the SEIS will discuss: (a) Applicability of the ''archaeology exception'' to the Commercial Slip wall, and to other existing historic resources, if any, at the Inner Harbor Project site; (b) Whether the Commercial Slip wall must be buried in order to protect it from the elements; (c) Whether rehabilitation, restoration or reconfiguration of the Commercial Slip wall is a reasonable and prudent alternative to burying the wall; and (d) Whether any resources at the Inner Harbor project site, other than Commercial Slip, are eligible for inclusion in the National Register, either individually or collectively. The SEIS will also address and discuss whether proposals submitted by the Preservation Coalition, and/or by other entities or individuals for the rehabilitation, restoration or reconfiguration, and/or utilization of the Commercial Slip wall, in the plan for the Inner Harbor Project, are reasonable and prudent.

Issued on: April 20, 2000.

Letitia Thompson,

Regional Administrator, Federal Transit Administration, Region II.

[FR Doc. 00–10297 Filed 4–24–00; 8:45 am]

BILLING CODE 4910–57–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

[Docket No. NHTSA 2000–7125, Notice 1]

General Motors Corp.; Receipt of Application for Determination of Inconsequential Noncompliance

General Motors Corporation (GM) has applied to be exempted from the notification and remedy requirements of 49 U.S.C. Chapter 301 ''Motor Vehicle Safety'' for a noncompliance with Federal Motor Vehicle Safety Standard (FMVSS) No. 209, ''Seat Belt Assemblies,'' on the basis that the noncompliance is inconsequential to motor vehicle safety. GM has filed a report of a noncompliance pursuant to 49 CFR part 573 ''Defects and Noncompliance Reports.''

This notice of receipt of the application is published under 49 U.S.C. 30118 and 30120 and does not represent any agency decision or other exercise of judgment concerning the merits of the application.

Description of Noncompliance

GM has determined that the driver safety belt assembly in some GM S/T pickup trucks and sport utility vehicles does not meet the requirements of S4.3(j)(1) of FMVSS 209. The vehicles involved are model year 1999 and 2000 versions of the Chevrolet S–10 and GMC Sonoma pickups and the Chevrolet Blazer/Trail Blazer, GMC Jimmy/Envoy, and Oldsmobile Bravada utility vehicles. Some of these trucks were built with a driver safety belt emergency

locking retractor that will not meet the 0.7 g locking requirements of the standard.

GM requested exemption from the notice and remedy requirement of the 49 U.S.C. 30118(d) and 49 U.S.C. 30120(h), because it believes this noncompliance is inconsequential to motor vehicle safety.

S4.3(j)(1) of FMVSS No. 209 requires that an emergency locking retractor of a Type 1 or Type 2 safety belt assembly ''shall lock before the webbing extends 25 mm when the retractor is subjected to an acceleration of 7 m/s^2 (0.7 g).''

Some of the retractors in question exhibit, to a varying degree, plastic flash (burr) on the sensor lever near the pivot where it mates to the sensor housing. This flash can cause a nonconformance with the 0.7 g locking requirement due to potential increased drag of the sensor lever in the housing.

Supporting Information as Submitted by General Motors

GM reported the following analysis to support the petition.

GM and its safety belt supplier located retractors from the same build period (weeks 6–32 of 1999) as the subject retractors in order to perform testing to investigate this matter. A total of 1,392 retractors from this build period were obtained and tested. Of these, only 50 (3.5%) did not lock when tested in each of four directions at 0.6 g (the GM test specification level). Only 10 of those (0.72% of the 1,392 total) did not lock when tested 10 times in each of four directions at 0.7 g. Based on this testing, only a very small portion of the subject retractors is expected to not meet the 0.7 g requirement.

Additionally, GM compared the 0.7 g retractor locking requirement to (1) the onset of significant shoulder belt loading in S/T truck crash tests and (2) the calculated side-pull coefficient often used to help assess rollover propensity. These collision types represent circumstances where the safety belt certainly provides important safety benefits. The crash test analysis indicates retractor locking still occurs prior to any significant safety belt loading or motion of the occupant relative to the belt. The rollover analysis indicates that safety belt retractor lock-up will occur prior to rollover of these subject vehicles.

Finally, as a result of tests performed on the small quantity (10) of questionable retractors that were available, GM also has determined that the simulation of the jouncing and jostling that vehicles are subject to during transit to dealerships, either by rail or truck (haulaway), generally reduces the effect of the flash such that a large percentage of the noncompliant vehicles become compliant prior to transit completion. In the case of rail transit, we estimate noncompliant retractors to become compliant after four hours of transit. Almost all vehicles shipped by rail travel more than four hours. In the case of simulated haulaway transit, six of nine noncompliant retractors were compliant after three hours of transit (approximately 150 miles), and seven of nine were compliant after six hours of transit (approximately 300 miles). Approximately 90% of all S/T trucks shipped by haulaway travel more than three hours.

Accordingly, the already small number of potentially noncompliant retractors will be further reduced by the time they arrive at the dealership. For the reasons outlined above, GM believes that this noncompliance is inconsequential to motor vehicle safety. Accordingly GM petitions that it be exempt from the remedy and recall provision of the Motor Vehicle Safety Act in this case.

Interested persons are invited to submit written data, views and arguments on the petition of GM, described above. Comments should refer to the Docket Number and be submitted to: Docket Management, National Highway Traffic Safety Administration, Room PL 401, 400 7th Street, SW., Washington, DC 20590. It is requested that two copies be submitted.

All comments received before the close of business on the closing date indicated below will be considered. The application and supporting materials, and all comments received after the closing date will also be filed and will be considered to the extent practicable. When the application is granted or denied, a Notice will be published in the **Federal Register** pursuant to the authority indicated below.

Comment closing date: May 25, 2000.

(49 U.S.C. 30118, 30120; delegations of authority at 49 CFR 1.50 and 49 CFR 501.8)

Issued on: April 19, 2000.

Stephen R. Kratzke,

Associate Administrator for Safety Performance Standards.

[FR Doc. 00–10246 Filed 4–24–00; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

[Docket No. NHTSA–2000–7164; Notice 1]

Suzuki Motor Corp.; Receipt of Application for Decision of Inconsequential Noncompliance

Suzuki Motor Corporation of Hamamatsu, Japan, has determined that 1,595 vehicles fail to comply with Federal Motor Vehicle Safety Standard (FMVSS) No. 225, ''Child Restraint Anchorage Systems,'' and has filed an appropriate report pursuant to 49 CFR part 573, ''Defect and Noncompliance Reports.'' Suzuki has also applied to be exempted from the notification and remedy requirements of 49 U.S.C. Chapter 301—''Motor Vehicle Safety'' on the basis that the noncompliance is inconsequential to motor vehicle safety.

This notice of receipt of an application is published under 49 U.S.C. 30118 and 30120 and does not represent any agency decision or other exercise of judgment concerning the merits of the application.

FMVSS No. 225, S4.1, requires that:

Each tether anchorage and each child restraint anchorage system installed, either voluntarily or pursuant to this standard, in any new vehicle manufactured on or after September 1, 1999, shall comply with the configuration, location, marking and strength requirements of this standard. The vehicle shall be delivered with written information, in English, on how to appropriately use those anchorages and systems.

FMVSS No. 225, S12, requires that:

The vehicle must provide written instructions, in English, for using the tether anchorages and the child restraint anchorage system in the vehicle. If the vehicle has an owner's manual, the instructions must be in that manual. The instructions shall:

(a) Indicate which seating positions in the vehicle are equipped with tether anchorages and child restraint anchorage systems;

(b) In the case of vehicles required to be marked as specified in paragraphs S4.1, S9.5(a), or S15.4, explain the meaning of markings provided to locate the lower anchorages of child restraint anchorage systems; and

(c) Include instructions that provide a step-by-step procedure, including diagrams, for properly attaching a child restraint system's tether strap to the tether anchorages.

At the start of production for the 2000 model year, Suzuki began installing user-ready tether anchorages as standard equipment in Suzuki Swift vehicles. Due to an oversight, however, Suzuki neglected to update the Suzuki Swift owner's manual in conjunction with this production change. As a result, the owner's manual for 1,595 Suzuki Swift vehicles manufactured between August 1999 and February 2000, and shipped prior to March 2000 do not comply with the information requirements in FMVSS No. 225.

Suzuki supports its application for inconsequential noncompliance with the following:

The vehicle owner's manual for the subject Suzuki Swift vehicles contains the following text relating to the use of child restraint systems that require use of a top tether:

''Some child restraint systems require the use of a top strap. If you use such a restraint system and your vehicle is not equipped with the top tether strap anchor bracket, have your dealer install the top strap anchor bracket, or contact your dealer for instructions on how to install the anchor bracket.''

In addition to the text message, the owner's manual contains two illustrations (one for the hatchback model and one for the sedan model) showing a child restraint system

positioned at one of the rear seating positions, with its tether strap attached to the tether anchorage.

Although the Swift owner's manual does not mention that user-ready tether anchorages are provided as standard equipment and does not show all of the seating positions that are equipped with a tether anchorage, the illustrations in the manual do show the tether anchorage location for one of the rear seating positions. Suzuki believes that vehicle owners will assume, based on the illustrations, that anchorages are provided for both rear seating positions. In addition, when you look at the actual vehicle, it is obvious that user-ready anchorages are provided as standard equipment for both rear seating positions. Since the tether anchorages are easily recognizable in the vehicle, Suzuki believes that failure to fully illustrate the location of each tether anchorage in the vehicle owner's manual is inconsequential.

The Swift owner's manual also does not fully comply with the requirement for ''...provide a step-by-step procedure, including diagrams, for properly attaching a child restraint system to the tether anchorages...''. Typically, because there are differences in child restraint system design, the vehicle owner's manual can only provide general instructions to hook the tether strap hook into the anchor bracket and tighten the tether strap. These steps are somewhat obvious, and should be intuitively understood by vehicle owners.

Also, each child restraint system is required to be accompanied with its own installation instructions. S5.6.1 of FMVSS No. 213, Child Restraint Systems, requires that each child restraint system ''...must be accompanied by printed installation instructions in the English language that provide a step-by-step procedure, including diagrams, for installing the system in motor vehicles...''. Suzuki believes that vehicle owners rely on the installation instructions provided with the child restraint system, rather than those provided in the vehicle owner's manual, for information about how to install the child restraint system in their vehicle. As a result, Suzuki believes that failure to provide a step-by-step procedure, in the vehicle owner's manual, for attaching a child restraint system to the vehicle's tether anchorages is inconsequential to safety.

Interested persons are invited to submit written data, views, and arguments on the application of Suzuki described above. Comments should refer to the docket number and be submitted to: U.S. Department of Transportation Docket Management, Room PL–401, 400 Seventh Street, SW, Washington, DC 20590. It is requested, but not required, that two copies be submitted.

All comments received before the close of business on the closing date indicated below will be considered. The application and supporting materials, and all comments received after the closing date, will also be filed and will be considered to the extent possible. When the application is granted or denied, the notice will be published in the **Federal Register** pursuant to the authority indicated below.

Comment closing date: May 25, 2000.

(49 U.S.C. 30118 and 30120; delegations of authority at 49 CFR 1.50 and 501.8)

Issued on: April 19, 2000.

Stephen R. Kratzke,

Associate Administrator for Safety Performance Standards.

[FR Doc. 00–10245 Filed 4–24–00; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

Petition for Exemption From the Vehicle Theft Prevention Standard; Ford

AGENCY: National Highway Traffic Safety Administration (NHTSA) Department of Transportation (DOT).

ACTION: Grant of petition for exemption.

SUMMARY: This document grants in full the petition of Ford Motor Company (Ford) for an exemption of a high-theft line, the Mercury Sable, from the parts-marking requirements of the Federal Motor Vehicle Theft Prevention Standard. This petition is granted because the agency has determined that the antitheft device to be placed on the line as standard equipment is likely to be as effective in reducing and deterring motor vehicle theft as compliance with the parts-marking requirements of the Theft Prevention Standard.

DATES: The exemption granted by this notice is effective beginning with model year (MY) 2001.

FOR FURTHER INFORMATION CONTACT: Ms. Rosalind Proctor, Office of Planning and Consumer Programs, NHTSA, 400 Seventh Street, S.W., Washington DC 20590. Ms. Proctor's telephone number is (202) 366–0846. Her fax number is (202) 493–2290.

SUPPLEMENTARY INFORMATION: In a petition dated December 13, 1999, Ford requested an exemption from the parts marking requirements of the Theft Prevention Standard (49 CFR Part 541) for the Mercury Sable vehicle line beginning in MY 2001. The petition is pursuant to 49 CFR Part 543, Exemption From Vehicle Theft Prevention Standard, which provides for exemptions based on the installation of an antitheft device as standard equipment for the entire line.

Review of Ford's petition disclosed that certain information was not provided in its original petition. Consequently, by telephone call on February 28 and March 15, 2000, Ford was informed of its areas of deficiency. Subsequently on February 28 and March 17, 2000, Ford submitted its supplemental information addressing these deficiencies. Ford's February 28 and March 17, 2000 faxes together constitute a complete petition, as required by 49 CFR Part 543.7, in that it met the general requirements contained in § 543.5 and the specific content requirements of § 543.6.

In its petition, Ford provided a detailed description and diagram of the identity, design, and location of the components of the antitheft device for the new line. Ford will install its antitheft device, the SecuriLock Passive Anti-Theft Electronic Engine Immobilizer System (SecuriLock) as standard equipment on the MY 2001 Mercury Sable. The system has already been installed as standard equipment on its MY 2000 Sable.

In order to ensure the reliability and durability of the device, Ford conducted tests, based on its own specified standards. Ford provided a detailed list of the tests conducted and stated its belief that the device is reliable and durable since it complied with Ford's specified requirements for each test. The environmental and functional tests conducted were for thermal shock, high temperature exposure, low-temperature exposure, powered/thermal cycle, temperature/humidity cycling, constant humidity, end-of-line, functional, random vibration, tri-temperature parametric, bench drop, transmit current, lead/lock strength/integrity, output frequency, resistance to solvents, output field strength, dust, and electromagnetic compatibility. Ford requested confidential treatment for some of the information and attachments submitted in support of its petition. In a letter to Ford dated August 4, 1998, the agency granted its request for confidential treatment of certain aspects of its petition.

The Ford SecuriLock is a transponder-based electronic immobilizer system. The device is activated when the driver/operator turns off the engine by using the properly coded ignition key. When the ignition key is turned to the start position, the transponder (located in the head of the key) transmits a code to the powertrain's electronic control module. The vehicle's engine can only be started if the transponder code matches the code previously programmed into the powertrain's electronic control module. If the code does not match, the engine will be disabled. Ford stated that there are seventy-two quadrillion different codes and each transponder is hard-

coded with a unique code at the time of manufacture. Additionally, Ford stated that the communication between the SecuriLock control function and the powertrain's electronic control module is encrypted.

Ford stated that its SecuriLock system incorporates a theft indicator using a light-emitting diode (LED) that provides information to the driver/operator as to the ''set'' and ''unset'' condition of the device. When the ignition is initially turned to the ''ON'' position, a 3-second continuous LED indicates the proper ''unset'' state of the device. When the ignition is turned to ''OFF'', a flashing LED indicates the ''set'' state of the device and provides visual information that the vehicle is protected by the SecuriLock system. Ford states that the integration of the setting/unsetting device (transponder) into the ignition key prevents any inadvertent activation of the device.

Ford believes that it would be very difficult for a thief to defeat this type of electronic immobilizer system. Ford believes that its new device is reliable and durable because its does not have any moving parts, nor does it require a separate battery in the key. If the correct code is not transmitted to the electronic control module (accomplished only by having the correct key), there is no way to mechanically override the system and start the vehicle. Furthermore, Ford stated that drive-away thefts are virtually eliminated with the sophisticated design and operation of the electronic engine immobilizer system which makes conventional theft methods (*i.e.,* hot-wiring or attacking the ignition-lock cylinder) ineffective. Ford reemphasized that any attempt to slam-pull the ignition-lock cylinder will have no effect on a thief's ability to start the vehicle.

Ford stated that the effectiveness of its SecuriLock device is best reflected in the reduction of the theft rates for its Mustang GT and Cobra models from MY 1995 to 1996. The SecuriLock antitheft device was voluntarily installed on all Mustang GT and Cobra models, the Taurus LX and SHO models, and the Sable LS model as standard equipment in MY 1996. In MY 1997, the SecuriLock system was installed on the entire Mustang vehicle line as standard equipment. Ford notes that a comparison of the National Crime Information Center's (NCIC) calendar year (CY)1995 theft data for MY 1995 Mustang GT and Cobra vehicles without an immobilizer device installed with MY 1997 data for Mustang GT and Cobra vehicles with an immobilizer device installed, shows a reduction in thefts of approximately 75% for the vehicles with the immobilizer. Additionally, Ford stated that its SecuriLock device has been installed as standard equipment on the entire Mustang vehicle line since MY 1997.

As part of its submission, Ford also provided a Highway Loss Data Institute (HLDI)'s theft loss bulletin, Vol. 15, No. 1, September 1997, which evaluated 1996 Ford Mustang and Taurus models fitted with the SecuriLock device and corresponding 1995 models without the SecuriLock device. The results as reported by HLDI indicated a reduction in overall theft losses by approximately 50% for both Mustang and Taurus models.

Additionally, Ford stated that its SecuriLock device has been demonstrated to various insurance companies, and as a result AAA Michigan and State Farm now give an antitheft discount of 25% and 10% respectively on premiums for comprehensive insurance for all Ford vehicles equipped with the device.

Ford's proposed device, as well as other comparable devices that have received full exemptions from the parts-marking requirements, lacks an audible or visible alarm. Therefore, these devices cannot perform one of the functions listed in 49 CFR Part 542.6(a)(3), that is, to call attention to unauthorized attempts to enter or move the vehicle. However, theft data have indicated a decline in theft rates for vehicle lines that have been equipped with antitheft devices similar to that which Ford proposes. In these instances, the agency has concluded that the lack of a visual or audio alarm has not prevented these antitheft devices from being effective protection against theft.

On the basis of comparison, Ford has concluded that the antitheft device proposed for its vehicle line is no less effective than those devices in the lines for which NHTSA has already granted full exemptions from the parts-marking requirements.

Based on the evidence submitted by Ford, the agency believes that the antitheft device for the Mercury Sable vehicle line is likely to be as effective in reducing and deterring motor vehicle theft as compliance with the parts-marking requirements of the theft prevention standard (49 CFR part 541).

The agency believes that the device will provide four of the five types of performance listed in 49 CFR part 543.6(a)(3): promoting activation; preventing defeat or circumvention of the device by unauthorized persons; preventing operation of the vehicle by unauthorized entrants; and ensuring the reliability and durability of the device.

As required by 49 U.S.C. 33106 and 49 CFR part 543.6(a)(4) and (5), the agency finds that Ford has provided adequate reasons for its belief that the antitheft device will reduce and deter theft. This conclusion is based on the information Ford provided about its antitheft device.

For the foregoing reasons, the agency hereby grants in full Ford Motor Company's petition for an exemption for the MY 2001 Sable vehicle line from the parts-marking requirements of 49 CFR part 541.

If Ford decides not to use the exemption for this line, it must formally notify the agency, and, thereafter, must fully mark the line as required by 49 CFR parts 541.5 and 541.6 (marking of major component parts and replacement parts).

NHTSA notes that if Ford wishes in the future to modify the device on which this exemption is based, the company may have to submit a petition to modify the exemption.

Part 543.7(d) states that a part 543 exemption applies only to vehicles that belong to a line exempted under this part and equipped with the anti-theft device on which the line's exemption is based. Further, § 543.9(c)(2) provides for the submission of petitions ''to modify an exemption to permit the use of an antitheft device similar to but differing from the one specified in that exemption.'' The agency wishes to minimize the administrative burden that § 543.9(c)(2) could place on exempted vehicle manufacturers and itself. The agency did not intend in drafting

Part 543 to require the submission of a modification petition for every change to the components or design of an antitheft device. The significance of many such changes could be *de minimis.* Therefore, NHTSA suggests that if the manufacturer contemplates making any changes the effects of which might be characterized as de minimis, it should consult the agency before preparing and submitting a petition to modify.

Authority: 49 U.S.C. 33106; delegation of authority at 49 CFR 1.50.

Issued on: April 19, 2000.

Stephen R. Kratzke,

Associate Administrator for Safety Performance Standards.

[FR Doc. 00–10247 Filed 4–24–00; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF TREASURY

Internal Revenue Service

Announcement of Open Membership Application Period for the Information Reporting Program Advisory Committee

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Announcement of Open Membership Application Period for the Information Reporting Program Advisory Committee.

SUMMARY: In 1991 the Internal Revenue Service (IRS) established the Information Reporting Program Advisory Committee (IRPAC) at the request of the United States Congress. The primary purpose of IRPAC is to provide an organized public forum for discussion of relevant information reporting issues between officials of the IRS and representatives of the payer/practitioner community. IRPAC offers constructive observations about current or proposed policies, programs, and procedures, and when necessary, suggests ways to improve the operation of the Information Reporting Program (IRP). IRPAC is currently comprised of representatives from various segments of the private-sector payer/practitioner community. About half of the appointments to IRPAC will expire at the end of this year. Additional members will be selected for two-year terms beginning in January next year. The IRS is interested in representation from different areas of the payer/practitioner community.

SUPPLEMENTARY INFORMATION: IRPAC currently reports to the National Director, Office of Specialty Taxes, who is the executive responsible for ensuring and facilitating compliance by payers with information reporting requirements. IRPAC is instrumental in providing advice to enhance the IRP Program. Increasing participation by external stakeholders in the planning and improvement of the tax system will help achieve the goals of increasing voluntary compliance, reducing burden, and improving customer service. IRPAC members are not paid for their time or services, but consistent with Federal regulations, they are reimbursed for their travel and lodging expenses to attend one orientation meeting and two public meetings each year. IRPAC members are expected to attend and pay their own way to four working sessions each year, which are generally held in Washington, DC. Occasionally, some of these working sessions may be held outside of the Metropolitan Washington, DC area.

Anyone wishing to be considered for membership on IRPAC should so advise the IRS by the required deadline. Please complete the following application questionnaire (or a facsimile thereof prepared on a word processor), and forward it to Ms. Kate LaBuda of the Office of Payer Compliance, at the address below. Completed questionnaires should not be submitted by e-mail.

ADDRESSES: Internal Revenue Service, OP:EX:ST:PC, 1111 Constitution Avenue, NW., Room 2013, Washington, DC 20224.

DATES: Completed questionnaires (or facsimiles) should be received by IRS no later than Friday, July 7, 2000. Questionnaires received after this date will not be considered. An acknowledgment letter will be sent.

FOR FURTHER INFORMATION CONTACT: To have a copy of the application questionnaire mailed, faxed, or e-mailed to you, please contact Ms. Gloria Wilson at gloria.w.wilson@irs.gov or at 202–622–4393 (not a toll-free number). For general information about the application process or IRPAC in general, contact Kate LaBuda at kate.labuda@irs.gov or at 202–622–3404 (not a toll-free number).

Approved: April 17, 2000.

Kate LaBuda,

Acting Director, Office of Payer Compliance.

Information Reporting Program Advisory Committee Membership Application Questionnaire

The following questions must be answered by anyone interested in becoming a member of the Information Reporting Program Advisory Committee (IRPAC). Applications (or facsimiles) must be received at the address listed below by July 7, 2000. Those received after this date will not be considered. All applications received will be acknowledged. Questions may be directed to Kate LaBuda at kate.labuda@irs.gov or at 202–622–3404.

Ms. Kate LaBuda, OP:EX:ST:PC, Internal Revenue Service, Room 2013, 1111 Constitution Avenue, N.W., Washington, DC 20224

1. Name:
2. Title:
3. Employer Name:
4. Business Address:
5. Business Phone:
6. Fax Number:
7. E-Mail Address:
8. If you are applying on behalf of an organization or association other than your employer, please state the name, and address of that organization. Also, provide a letter of reference from that organization stating that you are nominated on their behalf to represent them. This letter should contain the name of a contact and this contact's phone number.
9. Home Address:
10. Home Phone:
11. Have you ever served on IRPAC or any other IRS advisory committee such as the Commissioner's Advisory Group (CAG), the Internal Revenue Service Advisory Council (IRSAC), the Electronic Tax Administration Advisory Committee (ETAAC), or any other one? If so, please explain. Do you currently have an application pending for membership on any other IRS advisory committee?
12. Check the *one* segment of the IRP payer/practitioner community to which the organization that you represent, and your experience, most closely relate:

___ Real Estate
___ Transmitter/Forms Developer
___ Software Developer
___ Insurance: Property/Casualty
___ Insurance: Life/Health
___ Securities
___ Mutual Funds
___ Payroll
___ State & Local Government
___ Corporate Compliance
___ Small Business Compliance
___ Large Practitioners
___ Small Practitioners
___ Employee Plans
___ Trust Companies
___ Transfer Agents
___ Large Banks/Financial Institutions
___ Small Banks/Financial Institutions
___ International Banking
___ Other (Please specify._____)

13. List the number of years of IRP-related experience you have, and specific sources of this IRP experience. (Please account for all years of IRP experience claimed.)
14. List any previous IRS or Treasury employment (please state position(s), title(s), and time in each position):
15. List educational and professional credentials (e.g., B.A., B.S., M.B.A., Ph.D., J.D., L.L.B., C.P.A., Enrolled Agent, etc.)
16. Identify organizations to which you belong and any relevant leadership positions you have held.
17. Please propose two topic ideas that you feel would be appropriate for discussion by IRPAC. Include a short description (three sentences) of each topic.

The following three items are required for an FBI name check.

18. Date of Birth:
19. Place of Birth:
20. Other names ever used:

The following items are required for an IRS tax check. (Please note that a tax check is not a tax audit.)

The Internal Revenue Service will perform the standard Federal Advisory Committee member tax check, (pursuant to 26 U.S.C. 6103; 5 U.S.C. 1303; Executive Orders 9397, 11222, 10450; CFR 5.2; 31 CFR Part O, Treasury Department Order Nos. 82 (Revised) and 150–87) and provide the information obtained to the Assistant Secretary (Administration) of the Treasury Department. The purpose of this tax check is to promote public confidence in the integrity of the Treasury Department and its administration of the Federal tax system. Your Social Security Number is required to identify your

tax records accurately. This tax check must be completed prior to any appointment to this Federal Advisory Committee and you are now being asked to voluntarily provide the following information and, at a later time, you will be asked to sign a formal tax check waiver:

21. Social Security Number (SSN):

22. Spouse's name and SSN (if married and filing jointly):

The following item is required because of the Foreign Agents Registration Act (FARA), as amended:

23. Are you presently required to register as an agent of a foreign principal under FARA, as amended?

Note: Pursuant to 18 U.S.C. sec. 219, an individual who is required to register as an agent of a foreign principal under FARA is prohibited from serving on IRPAC. By executing this questionnaire, you agree that (1) if you are required to register as an agent of a foreign principal under the FARA before your term commences on IRPAC, you will terminate any and all such agencies prior to beginning your tenure and will provide appropriate verification therefor; and (2) you will immediately resign from IRPAC if you become such an agent at any time during your term.

Certification

24. I certify that, to the best of my knowledge and belief, all of my statements are true, correct, complete, and made in good faith. I also agree to the background checks set forth herein.

Signature _____

Date _____

[FR Doc. 00–10308 Filed 4–24–00; 8:45 am]

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Federal Register

Tuesday,
April 25, 2000

Part II

Department of the Interior

Fish and Wildlife Service

50 CFR Part 20

Migratory Bird Hunting; Proposed 2000–01 Migratory Game Bird Hunting Regulations (Preliminary) With Requests for Indian Tribal Proposals; Proposed Rule

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 20

RIN 1018–AG08

Migratory Bird Hunting; Proposed 2000–01 Migratory Game Bird Hunting Regulations (Preliminary) With Requests for Indian Tribal Proposals

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule.

SUMMARY: The U.S. Fish and Wildlife Service (hereinafter Service or we) proposes to establish annual hunting regulations for certain migratory game birds for the 2000–01 hunting season. We annually prescribe outside limits (frameworks) within which States may select hunting seasons. We also request proposals from Indian tribes that wish to establish special migratory bird hunting regulations on Federal Indian reservations and ceded lands. Migratory game bird hunting seasons provide hunting opportunities for recreation and sustenance; aid Federal, State, and tribal governments in the management of migratory game birds; and permit harvests at levels compatible with migratory bird population status and habitat conditions.

DATES: You must submit comments for proposed early-season frameworks by July 28, 2000, and for proposed late-season frameworks by September 8, 2000. Tribes should submit proposals and related comments by June 2, 2000.

ADDRESSES: Send your comments on the proposals to the Chief, Office of Migratory Bird Management, U.S. Fish and Wildlife Service, Department of the Interior, ms 634–ARLSQ, 1849 C Street, NW., Washington, DC 20240. All comments received, including names and addresses, will become part of the public record. You may inspect comments during normal business hours in room 634, Arlington Square Building, 4401 North Fairfax Drive, Arlington, Virginia.

FOR FURTHER INFORMATION CONTACT: Ron W. Kokel at: Office of Migratory Bird Management, U.S. Fish and Wildlife Service, Department of the Interior, ms 634–ARLSQ, 1849 C Street, NW., Washington, DC 20240 (703) 358–1714.

SUPPLEMENTARY INFORMATION: For administrative purposes, this document consolidates the notice of intent to establish open migratory bird hunting seasons and the request for tribal proposals with the preliminary proposals for the annual hunting regulations-development process. We will publish the remaining proposed and final rulemaking documents separately. For inquiries on tribal guidelines and proposals, tribes should contact the following personnel.

Region 1—Brad Bortner, U.S. Fish and Wildlife Service, 911 N.E. 11th Avenue, Portland, Oregon 97232–4181; (503) 231–6164.

Region 2—Jeff Haskins, U.S. Fish and Wildlife Service, P.O. Box 1306, Albuquerque, New Mexico 87103; (505) 248–7885.

Region 3—Steve Wilds, U.S. Fish and Wildlife Service, Federal Building, One Federal Drive, Fort Snelling, Minnesota 55111–4056; (612) 713–5432.

Region 4—Frank Bowers, U.S. Fish and Wildlife Service, 1875 Century Boulevard, Room 324, Atlanta, Georgia 30345; (404) 679–4000.

Region 5—George Haas, U.S. Fish and Wildlife Service, 300 Westgate Center Drive, Hadley, Massachusetts 01035–9589; (413) 253–8576.

Region 6—John Cornely, U.S. Fish and Wildlife Service, P.O. Box 25486, Denver Federal Building, Denver, Colorado 80225; (303) 236–8145.

Region 7—Robert Leedy, U.S. Fish and Wildlife Service, 1011 East Tudor Road, Anchorage, Alaska 99503; (907) 786–3423.

Notice of Intent To Establish Open Seasons

This notice announces our intent to establish open hunting seasons and daily bag and possession limits for certain designated groups or species of migratory game birds for 2000–01 in the contiguous United States, Alaska, Hawaii, Puerto Rico, and the Virgin Islands, under §§ 20.101 through 20.107, 20.109, and 20.110 of subpart K of 50 CFR part 20.

''Migratory game birds'' are those bird species so designated in conventions between the United States and several foreign nations for the protection and management of these birds. Hunting of all other birds designated as migratory (under § 10.13 of Subpart B of 50 CFR part 10) is not permitted.

For the 2000–01 migratory game bird hunting season, we will propose regulations for certain designated members of the avian families Anatidae (ducks, geese, and swans); Columbidae (doves and pigeons); Gruidae (cranes); Rallidae (rails, coots, moorhens, and gallinules); and Scolopacidae (woodcock and snipe). We describe these proposals under Proposed 2000–01 Migratory Game Bird Hunting Regulations (Preliminary) in this document. We published definitions of waterfowl flyways and mourning dove management units, as well as a description of the data used in and the factors affecting the regulatory process, in the March 14, 1990, **Federal Register** (55 FR 9618).

Regulatory Schedule for 2000–01

This document is the first in a series of proposed, supplemental, and final rulemaking documents for migratory game bird hunting regulations. In supplemental proposed rulemakings, we will make proposals relating to the harvest of migratory game birds initiated after this publication is available for public review. Also, we will publish additional supplemental proposals for public comment in the **Federal Register** as population, habitat, harvest, and other information become available.

Because of the late dates when certain portions of these data become available, we anticipate abbreviated comment periods on some proposals. Special circumstances limit the amount of time we can allow for public comment on these regulations. Specifically, two considerations compress the time for the rulemaking process: the need, on one hand, to establish final rules early enough in the summer to allow resource agencies to select and publish season dates and bag limits prior to the beginning of hunting seasons and, on the other hand, the lack of current status data on most migratory game birds until later in the summer.

Because the regulatory process is strongly influenced by the times when information is available for consideration, we divide the regulatory process into two segments: early seasons and late seasons. Early seasons are those seasons that generally open prior to October 1, and include seasons in Alaska, Hawaii, Puerto Rico, and the Virgin Islands. Late seasons are those seasons opening in the remainder of the United States about October 1 and later, and include most of the general waterfowl seasons.

Major steps in the 2000–01 regulatory cycle relating to open public meetings and **Federal Register** notifications are illustrated in the accompanying diagram. All publication dates of **Federal Register** documents are target dates.

All sections of this and subsequent documents outlining hunting frameworks and guidelines are organized under numbered headings. These headings are:

1. Ducks
2. Sea Ducks
3. Mergansers
4. Canada Geese
5. White-fronted Geese
6. Brant

7. Snow and Ross's (Light) Geese
8. Swans
9. Sandhill Cranes
10. Coots
11. Moorhens and Gallinules
12. Rails
13. Snipe
14. Woodcock
15. Band-tailed Pigeons
16. Mourning Doves
17. White-winged and White-tipped Doves
18. Alaska
19. Hawaii
20. Puerto Rico
21. Virgin Islands
22. Falconry
23. Other

Later sections of this and subsequent documents will refer only to numbered items requiring your attention. Therefore, it is important to note that we will omit those items requiring no attention and remaining numbered items will be discontinuous and appear incomplete.

Requests for Tribal Proposals

Background

Beginning with the 1985–86 hunting season, we have employed guidelines described in the June 4, 1985, **Federal Register** (50 FR 23467) to establish special migratory bird hunting regulations on Federal Indian reservations (including off-reservation trust lands) and ceded lands. We developed these guidelines in response to tribal requests for our recognition of their reserved hunting rights, and for some tribes, recognition of their authority to regulate hunting by both tribal and nontribal members throughout their reservations. The guidelines include possibilities for:

(1) On-reservation hunting by both tribal and nontribal members, with hunting by nontribal members on some reservations to take place within Federal frameworks, but on dates different from those selected by the surrounding State(s); (2) On-reservation hunting by tribal members only, outside of usual Federal frameworks for season dates and length, and for daily bag and possession limits; and (3) Off-reservation hunting by tribal members on ceded lands, outside of usual framework dates and season length, with some added flexibility in daily bag and possession limits.

In all cases, tribal regulations established under the guidelines must be consistent with the annual March 10 to September 1 closed season mandated by the 1916 Convention Between the United States and Great Britain (for Canada) for the Protection of Migratory Birds (Convention). The guidelines are capable of application to those tribes that have reserved hunting rights on Federal Indian reservations (including off-reservation trust lands) and ceded lands. They also apply to the establishment of migratory bird hunting regulations for nontribal members on all lands within the exterior boundaries of reservations where tribes have full wildlife management authority over such hunting, or where the tribes and affected States otherwise have reached agreement over hunting by nontribal members on non-Indian lands.

Tribes usually have the authority to regulate migratory game bird hunting by nonmembers on Indian-owned reservation lands, subject to our approval. The question of jurisdiction is more complex on reservations that include lands owned by non-Indians, especially when the surrounding States have established or intend to establish regulations governing migratory bird hunting by non-Indians on these lands. In such cases, we encourage the tribes and States to reach agreement on regulations that would apply throughout the reservations. When appropriate, we will consult with a tribe and State with the aim of facilitating an accord. We also will consult jointly with tribal and State officials in the affected States where tribes may wish to establish special hunting regulations for tribal members on ceded lands. As explained in previous rulemaking documents, it is incumbent upon the tribe and/or the State to request consultation as a result of the proposal being published in the **Federal Register**. We will not presume to make a determination, without being advised by either a tribe or a State, that any issue is or is not worthy of formal consultation.

One of the guidelines provides for the continuation of harvest of migratory game birds by tribal members on reservations where such harvest is a customary practice. We do not oppose this harvest, provided it does not take place during the closed season required by the Convention, and it is not so large as to adversely affect the status of the migratory bird resource. For several years, we have reached annual agreement with tribes for migratory bird hunting by tribal members on their lands or on lands where they have reserved hunting rights. We will continue to consult with tribes that wish to reach a mutual agreement on hunting regulations for on-reservation hunting by tribal members.

Tribes should not view the guidelines as inflexible. Nevertheless, we believe that they provide appropriate opportunity to accommodate the reserved hunting rights and management authority of Indian tribes while ensuring that the migratory bird resource receives necessary protection. The conservation of this important international resource is paramount. Use of the guidelines is not required if a tribe wishes to observe the hunting regulations established by the State(s) in which the reservation is located.

Details Needed in Tribal Proposals

Tribes that wish to use the guidelines to establish special hunting regulations for the 2000–01 hunting season should submit a proposal that includes:

(1) The requested hunting season dates and other details regarding regulations;

(2) Harvest anticipated under the requested regulations;

(3) Methods that will be employed to measure or monitor harvest (mail-questionnaire survey, bag checks, etc.);

(4) Steps that will be taken to limit level of harvest, where it could be shown that failure to limit such harvest would seriously impact the migratory bird resource; and

(5) Tribal capabilities to establish and enforce migratory bird hunting regulations.

A tribe that desires the earliest possible opening of the waterfowl season should specify this request in their proposal, rather than request a date that might not be within the final Federal frameworks. Similarly, unless a tribe wishes to set more restrictive regulations than Federal regulations will permit, the proposal should request the same daily bag and possession limits and season length for ducks and geese that Federal regulations are likely to permit the States in the Flyway in which the reservation is located.

Tribal Proposal Procedures

We will publish details of tribal proposals for public review in later **Federal Register** documents. Because of the time required for our and public review, Indian tribes that desire special migratory bird hunting regulations for the 2000–01 hunting season should submit their proposals as soon as possible, but no later than June 2, 2000. Tribes should direct inquiries regarding the guidelines and proposals to the appropriate Service Regional Office listed under the caption *Supplementary Information.* Tribes that request special migratory game bird hunting regulations for tribal members on ceded lands should send a courtesy copy of the proposal to officials in the affected State(s).

Public Comments Solicited

The Department of the Interior's policy is, whenever practicable, to afford the public an opportunity to participate in the rulemaking process. Accordingly, we invite interested persons to submit written comments, suggestions, or recommendations regarding the proposed regulations. Before promulgation of final migratory game bird hunting regulations, we will take into consideration all comments received. Such comments, and any additional information received, may lead to final regulations that differ from these proposals. We invite interested persons to participate in this rulemaking by submitting written comments to the address indicated under the caption **ADDRESSES**.

You may inspect comments received on the proposed annual regulations during normal business hours at the Service's office in room 634, 4401 North Fairfax Drive, Arlington, Virginia. For each series of proposed rulemakings, we will establish specific comment periods. We will consider, but possibly may not respond in detail to, each comment. As in the past, we will summarize all comments received during the comment period and respond to them after the closing date in any final rules.

NEPA Consideration

NEPA considerations are covered by the programmatic document, ''Final Supplemental Environmental Impact Statement: Issuance of Annual Regulations Permitting the Sport Hunting of Migratory Birds (FSES 88–14),'' filed with the Environmental Protection Agency on June 9, 1988. We published Notice of Availability in the **Federal Register** on June 16, 1988 (53 FR 22582). We published our Record of Decision on August 18, 1988 (53 FR 31341). In addition, an August 1985 environmental assessment entitled ''Guidelines for Migratory Bird Hunting Regulations on Federal Indian Reservations and Ceded Lands'' is available from the address indicated under the caption **ADDRESSES**.

Endangered Species Act Consideration

Prior to issuance of the 2000–01 migratory game bird hunting regulations, we will consider provisions of the Endangered Species Act of 1973, as amended, (16 U.S.C. 1531–1543; hereinafter the Act) to ensure that hunting is not likely to jeopardize the continued existence of any species designated as endangered or threatened or modify or destroy its critical habitat and is consistent with conservation programs for those species. Consultations under Section 7 of this Act may cause us to change proposals in this and future supplemental proposed rulemaking documents.

Executive Order (E.O.) 12866

This rule is economically significant and was reviewed by the Office of Management and Budget (OMB) under E.O. 12866.

E.O. 12866 requires each agency to write regulations that are easy to understand. We invite comments on how to make this rule easier to understand, including answers to questions such as the following:

(1) Are the requirements in the rule clearly stated?

(2) Does the rule contain technical language or jargon that interferes with its clarity?

(3) Does the format of the rule (grouping and order of sections, use of headings, paragraphing, etc.) aid or reduce its clarity?

(4) Would the rule be easier to understand if it were divided into more (but shorter) sections?

(5) Is the description of the rule in the ''Supplementary Information'' section of the preamble helpful in understanding the rule?

(6) What else could we do to make the rule easier to understand?

Regulatory Flexibility Act

These regulations have a significant economic impact on substantial numbers of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). We analyzed the economic impacts of the annual hunting regulations on small business entities in detail, and the Service issued a Small Entity Flexibility Analysis (Analysis) in 1998. The Analysis documented the significant beneficial economic effect on a substantial number of small entities. The primary source of information about hunter expenditures for migratory game bird hunting is the National Hunting and Fishing Survey, which is conducted at 5-year intervals. The Analysis utilized the 1996 National Hunting and Fishing Survey and the U.S. Department of Commerce's County Business Patterns from which it was estimated that migratory bird hunters would spend between $429 million and $1,084 million at small businesses in 1998. Copies of the Analysis are available upon request from the Office of Migratory Bird Management.

Small Business Regulatory Enforcement Fairness Act

This rule is a major rule under 5 U.S.C. 804(2), the Small Business Regulatory Enforcement Fairness Act. For the reasons outlined above, this rule has an annual effect on the economy of $100 million or more. However, because this rule establishes hunting seasons, we do not plan to defer the effective date under the exemption contained in 5 U.S.C. 808 (1).

Paperwork Reduction Act

We examined these regulations under the Paperwork Reduction Act of 1995. The various recordkeeping and reporting requirements imposed under regulations established in 50 CFR part 20, Subpart K, are utilized in the formulation of migratory game bird hunting regulations. Specifically, OMB has approved the information collection requirements of the Migratory Bird Harvest Information Program and assigned clearance number 1018–0015 (expires 09/30/2001). This information is used to provide a sampling frame for voluntary national surveys to improve our harvest estimates for all migratory game birds in order to better manage these populations. OMB has also approved the information collection requirements of the Sandhill Crane Harvest Questionnaire and assigned clearance number 1018–0023 (expires 09/30/2000). The information from this survey is used to estimate the magnitude and the geographical and temporal distribution of the harvest, and the portion it constitutes of the total population.

A Federal agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number.

Unfunded Mandates Reform Act

We have determined and certify, in compliance with the requirements of the Unfunded Mandates Reform Act, 2 U.S.C. 1502 *et seq.*, that this rulemaking will not impose a cost of $100 million or more in any given year on local or State government or private entities.

Civil Justice Reform—Executive Order 12988

The Department, in promulgating this proposed rule, has determined that these regulations meet the applicable standards found in Sections 3(a) and 3(b)(2) of Executive Order 12988.

Takings Implication Assessment

In accordance with Executive Order 12630, this proposed rule, authorized by the Migratory Bird Treaty Act, does not have significant takings implications and does not affect any constitutionally protected property rights. This rule will not result in the physical occupancy of property, the physical invasion of

property, or the regulatory taking of any property. In fact, these rules allow hunters to exercise otherwise unavailable privileges and, therefore, reduce restrictions on the use of private and public property.

Federalism Effects

Due to the migratory nature of certain species of birds, the Federal Government has been given responsibility over these species by the Migratory Bird Treaty Act. We annually prescribe frameworks from which the States make selections and employ guidelines to establish special regulations on Federal Indian reservations and ceded lands. This process preserves the ability of the States and Tribes to determine which seasons meet their individual needs. Any State or Tribe may be more restrictive than the Federal frameworks at any time. The frameworks are developed in a cooperative process with the States and the Flyway Councils. This process allows States to participate in the development of frameworks from which they will make selections, thereby having an influence on their own regulations. These rules do not have a substantial direct effect on fiscal capacity, change the roles or responsibilities of Federal or State governments, or intrude on State policy or administration. Therefore, in accordance with Executive Order 13132, these regulations do not have significant federalism effects and do not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

List of Subjects in 50 CFR Part 20

Exports, Hunting, Imports, Reporting and recordkeeping requirements, Transportation, Wildlife.

The rules that eventually will be promulgated for the 2000–01 hunting season are authorized under 16 U.S.C. 703–711, 16 U.S.C. 712, and 16 U.S.C. 742 a–j.

Dated: March 24, 2000.

Donald J. Barry,

Assistant Secretary for Fish and Wildlife and Parks.

Proposed 2000–01 Migratory Game Bird Hunting Regulations (Preliminary)

Pending current information on populations, harvest, and habitat conditions, and receipt of recommendations from the four Flyway Councils, we may defer specific framework proposals (including opening and closing dates, season lengths, and bag limits). Unless otherwise specified, we are proposing no change from the final 1999–2000 frameworks of August 27 and September 27, 1999 (64 FR 47072 and 52124). Specific preliminary proposals that vary from the 1999–2000 frameworks and issues requiring early discussion, action, or the attention of the States or tribes are contained below:

1. Ducks

A. Harvest Strategy Considerations

We propose to continue the use of Adaptive Harvest Management (AHM) to guide the establishment of duck hunting regulations. The AHM approach recognizes that we cannot predict the consequences of hunting regulations with certainty, and provides a means for making objective decisions despite this uncertainty. In addition, a tightly integrated cycle of monitoring, assessment, and decision-making is required under AHM to better understand the relationships among hunting regulations, harvests, and waterfowl abundance. More detailed information about AHM can be found on the Internet at: http://www.fws.gov/r9mbmo/homepg.html.

Since 1995, AHM regulatory strategies have been based on the status of midcontinent mallards, which are defined as those breeding from South Dakota to Alaska (Federal survey strata 1–18, 20–50, and 75–77), and in Minnesota, Wisconsin, and Michigan. An optimal regulatory alternative for midcontinent mallards is based on breeding population size and water conditions in the Canadian prairies, and on empirical weights assigned to four competing models of population dynamics. The same regulatory alternative is applied in all four Flyways, although season lengths and bag limits are Flyway-specific.

Efforts are underway to extend the AHM process to account for mallards breeding westward and eastward of the midcontinent survey area. For the purposes of harvest regulation, eastern mallards are defined as those breeding in southern Ontario and Quebec (Federal survey strata 51–54 and 56), and in New Hampshire, Vermont, Massachusetts, Connecticut, Rhode Island, New York, Pennsylvania, New Jersey, Delaware, Maryland, and Virginia. Western mallards currently are defined as those breeding in Washington, Oregon, and California. These mallard stocks make significant contributions to the total mallard harvest, particularly in the Atlantic and Pacific Flyways.

Extension of the current process to account for multiple mallard stocks and Flyway-specific regulatory choices involves: (1) Augmentation of the decision criteria to include population and environmental variables relevant to eastern and western mallards; (2) revision of the objective function to account for harvest management objectives for mallards outside the midcontinent region; and (3) modification of the decision rules to allow independent regulatory choices in the Flyways. An optimal harvest strategy for each Flyway then can be derived, which in effect would represent an average of the optimal strategies for each breeding stock, weighted by the relative contribution of each stock to the respective Flyways.

Modifying the AHM protocol to account for multiple duck populations is one of the most challenging technical issues facing harvest managers. Never before have we tried to consider the status of multiple populations in such a formal way, nor have we attempted to give Flyways the ability to choose regulations that are predicated on their particular derivation of birds. We expect the efforts with eastern and western mallards to be precedent-setting and, thus, must be done carefully and in a way that provides a sound conceptual framework for considering additional duck populations in the future. Recently, the Service, in cooperation with the Atlantic Flyway Council, completed a technical assessment regarding modification of the current AHM protocol to account for eastern mallards. That report is available at: http://www.fws.gov/r9mbmo/reports/reports.html. We will consider the implications discussed in that assessment, as well as all public comment, in proposing a regulatory alternative for the Atlantic Flyway for the 2000–2001 hunting season.

G. Special Seasons/Species Management

i. Scaup

In 1999, we reduced the scaup daily bag limit to 3 in the Atlantic, Mississippi, and Central Flyways and 4 in the Pacific Flyway, based on the status of and trends in scaup populations and information from recent hunting seasons. A harvest management strategy for scaup was under development at that time but was not adopted because Flyway Council reviews of the draft strategy indicated further refinement was needed. We hoped to have a strategy completed prior to the 2000 hunting season; however, at this time it appears unlikely that sufficient progress can be made to do so. We are continuing to work with the Flyway Councils to complete the strategy, but if it cannot be completed in

time, scaup bag limits for this year's hunting season will again be based on scaup population status and harvest information.

ii. Canvasbacks

We continue to support the canvasback harvest strategy adopted in 1994. Overall, we believe the strategy has performed adequately, and have not found sufficient reason to alter it. However, results from the Service's Harvest Surveys indicate that canvasback harvests generally have been greater in both the U.S. and Canada than those predicted in the strategy. We note that harvest predictions used in the strategy were based largely on data collected several decades ago, and believe that more contemporary estimates would better reflect current harvest pressure. Therefore, we propose to replace the current predicted harvest values with the average harvests observed during recent (1994–97) hunting seasons. We will continue to monitor the strategy's performance as annual information from population and habitat surveys become available.

iii. September Teal/Wood Duck Seasons

The Wood Duck Population Monitoring Initiative showed that current wood duck monitoring efforts resulted in information that was capable of being used to manage wood ducks at no finer resolution than the Flyway level. In 1997, we stated that after September 2000, the special wood duck seasons in Florida, Kentucky and Tennessee would be discontinued; the year 2000 will be the last permitted for these seasons. The Service, in cooperation with the Atlantic and Mississippi Flyway Councils, is in the process of developing population models that will guide harvest management in the future. These models, and the accompanying evaluations of potential Flyway-wide expansions in harvest opportunity, will be developed prior to Spring 2001.

8. Swans

In March, we developed and made available for public review a Draft Supplemental Environmental Assessment (Assessment) on the continuation of general swan hunting seasons in parts of the Pacific Flyway. The Assessment includes a review of the past 5-year experimental general swan hunting seasons in parts of the Pacific Flyway and alternatives for establishment of future operational swan hunting seasons in the same area. The Assessment was prompted by requests from individuals, States, and various conservation organizations for a thorough examination of alternatives for swan hunting in the Pacific Flyway in light of continuing concerns for the Rocky Mountain Population of trumpeter swans. The Assessment deals with establishment of an operational approach for swan hunting and related efforts to address status and distributional concerns regarding the Rocky Mountain Population of trumpeter swans. Four alternatives, including the proposed action, are considered. Copies of the Assessment are available upon request from the Office of Migratory Bird Management.

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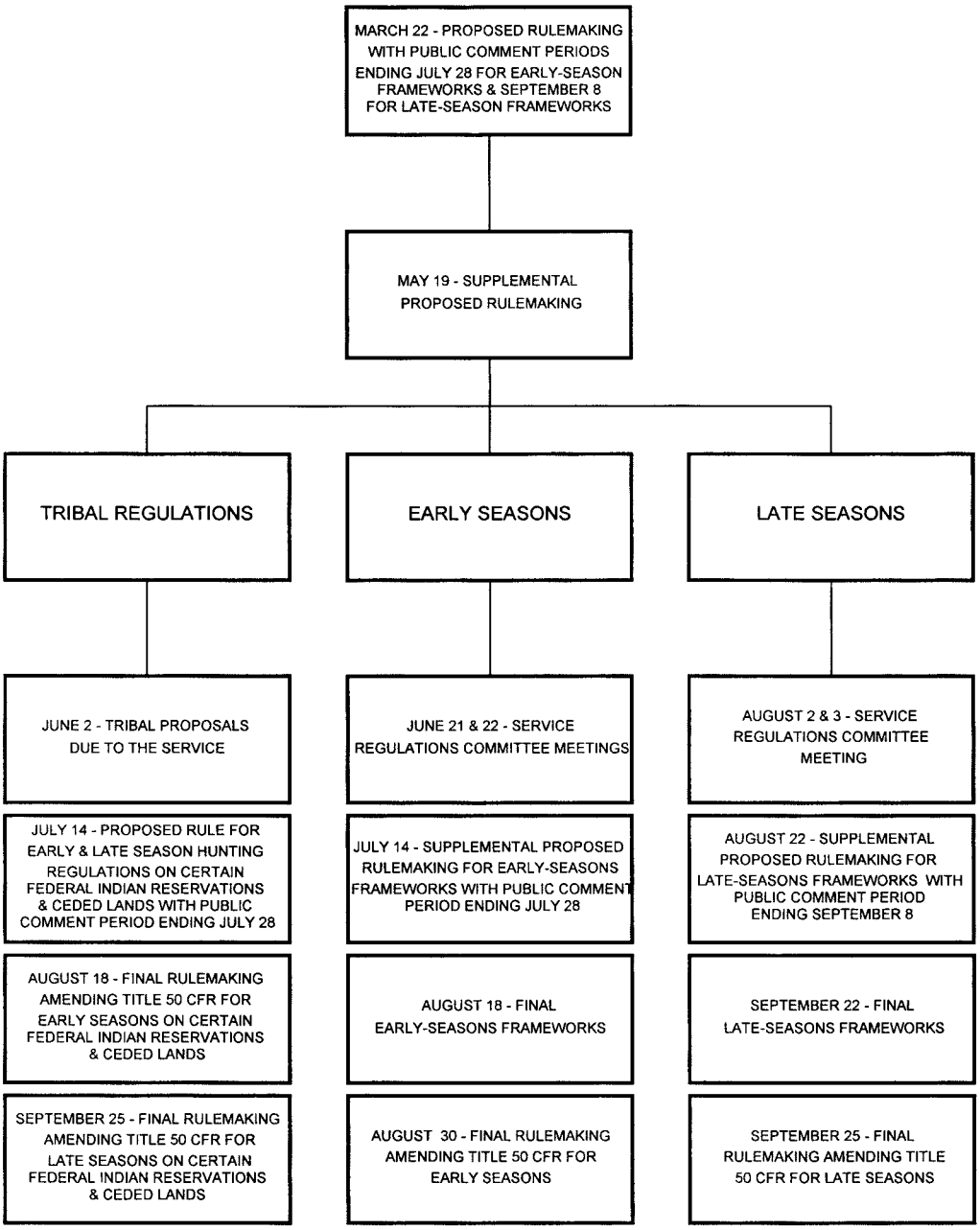

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Federal Register

Tuesday,
April 25, 2000

Part III

Environmental Protection Agency

40 CFR Parts 90 and 91

Phase 2 Emission Standards for New Nonroad Spark-Ignition Handheld Engines at or Below 19 Kilowatts and Minor Amendments to Emission Requirements Applicable to Small Spark-Ignition Engines and Marine Spark-Ignition Engines; Final Rule

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 90 and 91

[FRL–6548–2]

RIN 2060–AE29

Phase 2 Emission Standards for New Nonroad Spark-Ignition Handheld Engines At or Below 19 Kilowatts and Minor Amendments to Emission Requirements Applicable to Small Spark-Ignition Engines and Marine Spark-Ignition Engines

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: In this action, we are finalizing a second phase of regulations to control emissions from new nonroad spark-ignition handheld engines at or below 19 kilowatts (25 horsepower). The engines covered by this action are used principally in handheld lawn and garden equipment applications such as trimmers, leaf blowers, and chainsaws. The standards will result in an estimated 70 percent reduction of emissions of hydrocarbons plus oxides of nitrogen from handheld engine emissions under the current Phase 1 standards by year 2010. The standards will be phased in beginning with the 2002 model year. The standards will result in important reductions in emissions which contribute to excessively high ozone levels in many areas of the United States. We have estimated the cost at approximately $20 to $56 for individual units and significantly air quality benefits of 3.6 millions of HC over the life of the program.

In March 1999 we adopted Phase 2 regulations for small spark-ignition engines used in nonhandheld equipment. In this action we are including two provisions for Phase 2 nonhandheld engines that would partially modify the scope of the March 1999 final rule. First, we are adopting standards for two additional classes of nonhandheld engines that apply to engines below 100 cubic centimeters displacement used in nonhandheld equipment applications. Second, we are finalizing an option that allows manufacturers to certify engines greater than 19 kilowatts and less than or equal to one liter in displacement to the small engine Phase 2 standards.

With this document, we are also amending the provisions of the existing regulations for small spark-ignition nonroad engines at or below 19 kilowatts and marine spark-ignition nonroad engines. (We proposed these amendments in a separate document, and received no comments objecting to the proposal.) For small spark-ignition nonroad engines at or below 19 kilowatts, we are revising the applicability of the rule to certain engines used in recreational applications and revising the applicability of the handheld emission standards to accommodate cleaner but heavier 4-stroke engines. For marine spark-ignition engines, we are amending the existing regulations to provide compliance flexibility for small volume engine manufacturers during the standards' phase in period. Lastly, we are adopting a minor revision to the existing replacement engine provisions for both small spark-ignition nonroad engines at or below 19 kilowatts and marine spark-ignition nonroad engines to address issues that may arise concerning the importation of such engines. No significant air quality impact is expected from the amendments included in today's action.

DATES: The amendments to 40 CFR parts 90 and 91 are effective June 26, 2000.

ADDRESSES: Materials relevant to the Phase 2 provisions of this final rule, including the Final Regulatory Impact Analysis are contained in Public Docket A–96–55. Materials relevant to the amendments for small spark-ignition nonroad engines and marine spark-ignition engines are contained in Public Docket A–98–16. Both of these dockets are located at room M–1500, Waterside Mall (ground floor), U.S. Environmental Protection Agency, 401 M Street, SW, Washington, D.C. 20460. The dockets may be inspected from 8:00 a.m. until 5:30 p.m. Monday through Friday. The docket may also be reached by telephone at (202) 260–7548. As provided in 40 CFR part 2, we may charge a reasonable fee for photocopying.

For further information on electronic availability of this final rule, see the **SUPPLEMENTARY INFORMATION** section of this **Federal Register**.

FOR FURTHER INFORMATION CONTACT: For information on the Phase 2 provisions adopted in today's action contact Philip Carlson, U.S. EPA, Office of Air and Radiation, Office of Transportation and Air Quality, Assessment and Standards Division, (734) 214–4270; carlson.philip@epa.gov. For information on the amendments to the existing provisions for small spark-ignition nonroad engines and marine spark-ignition engines contact John Guy, U.S. EPA, Office of Air and Radiation, Office of Transportation and Air Quality, Certification and Compliance Division, (202) 564–9276; guy.john@epa.gov.

SUPPLEMENTARY INFORMATION:

Regulated Entities

Entities potentially regulated by this action are those that manufacture or introduce into commerce new small spark-ignition handheld or nonhandheld nonroad engines or equipment or new marine spark-ignition engines or equipment. Regulated categories and entities include:

Category	Examples of regulated entities
Industry	Manufacturers or importers of new nonroad small (at or below 19 kilowatt) spark-ignition handheld or nonhandheld engines and equipment. Manufacturers or importers of new marine spark-ignition outboard, personal watercraft, and jetboat engines and equipment.

This table is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be regulated by this action. This table lists the types of entities that we are now aware could potentially be regulated by this action. Other types of entities not listed in the table could also be regulated. To determine whether your company is regulated by this action, you should carefully examine the applicability criteria in section 90.1 and section 91.1 of title 40 of the Code of Federal Regulations. If you have questions regarding the applicability of this action to a particular entity, consult the people listed in the preceding **FOR FURTHER INFORMATION CONTACT** section.

Obtaining Electronic Copies of the Regulatory Documents

The preamble, regulatory language, Final Regulatory Impact Analysis, and Summary and Analysis of Comments are also available electronically from the EPA Internet Web site. This service is free of charge, except for any cost already incurred for Internet connectivity. The electronic version of this final rule is made available on the day of publication on the primary Web site listed below. The EPA Office of Transportation and Air Quality also publishes **Federal Register** notices and related documents on the secondary Web site listed below.

1. http://www.epa.gov/docs/fedrgstr/EPA–AIR/ (select the desired date or use the ''Search'' feature)
2. http://www.epa.gov/OMSWWW/ (look in ''What's New'' or under the specific rulemaking topic)

Please note that due to differences between the software used to develop the document and the software into which the document may be downloaded, changes in format, page length, *etc.*, may occur.

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I. Introduction

A. What Is the Background of This Final Rule?

On January 27, 1998, we issued a Notice of Proposed Rulemaking (NPRM) proposing a second phase of regulations to control emissions from new handheld and nonhandheld nonroad spark-ignition (SI) engines at or below 19 kilowatts (kW), hereafter referred to as ''small SI engines'' (see 63 FR 3950). This action was preceded by a March 27, 1997, Advance Notice of Proposed Rulemaking (see 62 FR 14740). We solicited comment on all aspects of the January 1998 NPRM and held a public hearing on February 6, 1998. The public comment period for the January 1998 NPRM closed March 13, 1998. On March 30, 1999, we finalized Phase 2 standards and compliance program requirements for Class I and Class II nonhandheld engines (see 64 FR 15208). In the final rule for nonhandheld engines, we noted that we planned to address the Phase 2 program for handheld engines in future **Federal Register** documents. We issued a Supplemental Notice of Proposed Rulemaking (SNPRM) for Phase 2 handheld engines on July 28, 1999 (see 64 FR 40940). We solicited comment on all aspects of the July 1999 SNPRM and held a public hearing on August 17, 1999. The public comment period for the July 1999 SNPRM closed September 17, 1999. The purpose of today's final rule is to adopt Phase 2 standards and compliance program requirements for handheld engines.

Today's action also contains two provisions that affect nonhandheld engines. First, we are adopting standards and compliance program requirements for two newly designated classes of nonhandheld engines with displacements below 100 cubic centimeters (cc), hereafter referred to as Class I–A and Class I–B engines. Second, we are adopting an optional provision that allows manufacturers to certify engines above 19 kW with displacement less than or equal to one liter to the Phase 2 small SI engine regulations.

Today's action is taken in response to section 213(a)(3) of the Clean Air Act, 42 U.S.C. 7547, which requires our standards for nonroad engines and vehicles to achieve the greatest degree of emission reduction achievable through the application of technology which the Administrator determines will be available, giving appropriate consideration to cost, lead time, noise, energy and safety factors. The standards and other compliance program requirements being adopted today satisfy this Clean Air Act mandate.

The development of this regulation started in 1996, shortly after the Phase I standards were finalized. Initially a formal regulatory negotiation process was attempted. After it became clear that the disparate interest of the multiple parties would not result in an agreement, the regulatory negotiation process was abandoned. Instead, at the request of industry, EPA developed the framework for a Phase II rule which was described in a Statement of Principles signed by manufacturers representing a significant portion of the US market. This SOP formed the basis for the Phase 2 NPRM.

The January 1998 NPRM contained lengthy discussion of the first set of proposed Phase 2 standards, the expected costs of their implementation, and the technologies that we expected manufacturers would use to meet the standards. The January 1998 NPRM also discussed the potential costs and benefits of adopting more stringent standards such as the second phase of standards that were then under consideration by the California Air Resources Board (ARB). In the January 1998 NPRM, we explicitly asked for comment regarding the level of the proposed standards and the impacts and timing for implementing more stringent standards, so as to allow us to establish the most appropriate standards in the final rule. In particular, we requested comment on the impacts and timing for implementing emission standards that would require the same types of technology as anticipated by proposed rules under consideration at that time by the California ARB.

After the close of the comment period on the January 1998 NPRM and upon reviewing information supplied during

and after the comment period, we determined that it was desirable to get further details regarding the technological feasibility, cost and lead time implications of meeting standards more stringent than those contained in the January 1998 NPRM. The January 1998 NPRM already contained estimates of the costs and feasibility of more stringent standards. Some commenters had charged that, based on these discussions in the January 1998 NPRM, our proposed standards would not be stringent enough to satisfy the stringency requirements of Clean Air Act section 213(a)(3). For the purpose of gaining additional information on feasibility, cost and lead time implications of more stringent standards, we had several meetings, phone conversations, and written correspondence with specific engine manufacturers, with industry associations representing engine and equipment manufacturers, with developers of emission control technologies and suppliers of emission control hardware, with representatives of state regulatory associations, and with members of Congress. We also sought information relating to the impact on equipment manufacturers, if any, of changes in technology potentially required to meet more stringent standards than were proposed in the January 1998 NPRM. We published a Notice of Availability on December 1, 1998, highlighting the additional information gathered in response to the January 1998 NPRM (see 63 FR 66081) and continued having discussions with various parties regarding low emission technologies for the small SI handheld engine market.

Since the publication of the January 1998 NPRM, there have been rapid and dramatic advances in emission reduction technologies for handheld engines. We were not able to fully evaluate these technologies or discuss their possible availability at the time of the January 1998 NPRM. After having reviewed the most up-to-date information available on these new technologies, we believed the information supported Phase 2 standards for handheld engines that were significantly more stringent than those proposed in the January 1998 NPRM and even more stringent than the second phase of California ARB standards. In light of this new information, and in the interest of providing an opportunity for public comment on the stringent levels being considered for the Phase 2 handheld engine emission standards and the potential technologies available for meeting such standards, we reproposed Phase 2 regulations for handheld engines in the July 28, 1999, SNPRM (see 64 FR 40940). The July 1999 SNPRM proposed Phase 2 hydrocarbon plus oxides of nitrogen ($HC+NO_x$) standards of 50 grams per kilowatt-hour (g/kW-hr) for Class III and Class IV engines and of 72 g/kW-hr for Class V engines, phased in over several years. The proposal also included an averaging, banking, and trading program. The July 1999 SNPRM also proposed revised compliance program requirements for handheld engines. Most of the proposed compliance program changes were intended to make the handheld engine compliance program the same as the requirements finalized for nonhandheld engines in March 1999 and to establish a consistent approach to compliance for all nonroad small SI engines.

In addition to the reproposed Phase 2 standards for handheld engines, we also proposed standards for two new classes of small displacement nonhandheld engines in the July 1999 SNPRM. We had requested comment on the need for such standards in the January 1998 NPRM and received comments from a number of engine manufacturers supporting such standards. Originally, we did not propose different standards for small displacement nonhandheld engines citing the availability of the averaging, banking and trading program as a reason for not proposing separate standards. However, because the Phase 2 standards we finalized for nonhandheld Class I engines are more stringent than originally proposed in the January 1998 NPRM and because it is technologically more difficult to meet a given level of emissions (in g/kW-hr) as the engine displacement is decreased, manufacturers who would likely produce such small displacement engines would not likely be able to meet the Phase 2 Class I standards recently finalized and would not be able to produce such small displacement nonhandheld engines even if they could take advantage of the averaging, banking and trading program. Therefore, we proposed standards for two classes of small displacement nonhandheld engines that would take effect upon the effective date of today's final rule. The first small displacement class covered nonhandheld engines with displacements below 66cc and was referred to as Class I–A engines. The second small displacement class covered nonhandheld engines at or above 66cc and below 100cc and was referred to as Class I–B engines.

In response to a request from manufacturers of small engines, we also included in the July 1999 SNPRM a proposal to allow manufacturers the option of certifying engines greater than 19 kW and less than or equal to one liter in displacement to the small SI engine Phase 2 regulations for nonhandheld engines beginning with the 2001 model year. Because of their size, these engines are not required to be certified under the current Phase 1 small SI engine program, and they do not have to meet any previously existing Federal requirements because we do not currently regulate spark-ignition engines above 19 kilowatts. However, because there are a small number of these engines that are primarily derivatives of other certified small SI engines at or below 19 kW, we believed it would be appropriate for manufacturers to have the option to certify these engines to the Phase 2 requirements for small SI engines. As noted in the July 1999 SNPRM, engines certified under the proposed option would be required to certify for the longest useful life period of 1,000 hours. The requirements of this option were consistent with those that had already been adopted by the California ARB.

We solicited comment on all aspects of the July 1999 SNPRM and held a public hearing on August 17, 1999. The public comment period for the July 1999 SNPRM closed September 17, 1999.

In addition to the Phase 2 provisions for small SI nonroad engines highlighted above, today's action adopts several minor amendments to the existing regulations for small SI nonroad engines and marine SI engines. These amendments were included in a separate proposal on February 3, 1999 (see 64 FR 5251). We originally promulgated final regulations applicable to small SI engines on July 3, 1995 (see 60 FR 34582, codified at 40 CFR Part 90) and final regulations applicable to spark-ignition marine outboard and personal watercraft (including jetboat) engines (marine SI engines) on October 4, 1996 (see 61 FR 52088, codified at 40 CFR Part 91).[1]

The small SI regulations took effect with model year 1997 for the majority of covered engines and in the 1998 model year for certain higher displacement handheld engines. The marine SI rule took effect with 1998 or 1999 engines, depending upon their usage, and involves a corporate average standard which tightens each year through 2006. (The marine SI rule does

[1] The preamble to the final marine SI rule (61 FR 52090) explains that for purposes of the marine SI rule, jetboats are considered as personal watercraft, except where their engines are derived from sterndrive or inboard type marinized automotive blocks.

not apply to sterndrive or inboard engines. We expect to issue a proposal to regulate such engines in the coming year). Under the regulations, both small SI engine and marine SI engine manufacturers are prohibited from introducing into commerce any engine not covered by a EPA-issued certificate of conformity (40 CFR 90.1003(a)(1)(I); 40 CFR 91.1103(a)(1)(I)). The rules also prohibit equipment and vessel manufacturers from introducing new nonroad equipment and vessels into commerce unless the engine in the equipment or vessel is certified to comply with the applicable nonroad emission requirements (40 CFR 90.1003(a)(5); 40 CFR 91.1103(a)(5)).[2] We added provisions to allow engine manufacturers to produce replacement engines that were not certified to currently applicable standards to each of the two rules described above by a direct final rule issued August 7, 1997 (62 FR 42638).

B. What Are the Basic Provisions of This Final Rule?

The following section provides an overview of the Phase 2 provisions being finalized with today's action as well as the amendments to the current small SI engine and marine SI engine programs. Additional detail explaining the program as well as discussion of information and analyses which led to the selection of these requirements is contained in subsequent sections. Summaries of comments we received on the July 1999 SNPRM (for the Phase 2 program) and the February 1999 NPRM (for the amendments) and detailed responses to those comments are contained in a separate document included in the dockets for today's final rule.

Consistent with the Phase 1 regulations for small SI engines, today's action and the recently finalized Phase 2 program for nonhandheld engines distinguish between engines used in handheld equipment and those used in nonhandheld equipment. In today's action, we are adopting Phase 2 emission standards for distinct engine size categories referred to as ''engine classes'' within the handheld engine equipment designation. Table 1 summarizes the $HC+NO_X$ emission standards for Class III, Class IV, and Class V handheld engines and when these standards are scheduled to take effect under this final rule. Table 2 summarizes the CO standards and the effective dates of the CO standards. In response to comments submitted on the July 1999 SNPRM, the standards and implementation schedule contained in today's final rule for handheld engines reflect a four year phase in schedule instead of a five year phase in schedule as proposed in the SNPRM.

TABLE 1.—PHASE 2 $HC+NO_X$ EMISSION STANDARDS FOR HANDHELD ENGINES

Engine class	$HC+NO_X$ Standards (g/kW-hr) by model year					
	2002	2003	2004	2005	2006	2007 and later
Class III	238	175	113	50	50	50
Class IV	196	148	99	50	50	50
Class V	.....	.....	143	119	96	72

TABLE 2.—PHASE 2 CO EMISSION STANDARDS FOR HANDHELD ENGINES

Engine class	CO standard (g/kW-hr)	Effective model year
Class III	805	2002
Class IV	805	2002
Class V	603	2004

When fully phased in, these Phase 2 standards are expected to result in an estimated 70 percent annual reduction in combined $HC+NO_X$ emissions from small SI handheld engines compared to the Phase 1 emission requirements for such engines. Due to the use of improved technology, CO emissions are also expected to decrease below Phase 1 levels.

To help engine manufacturers meet the $HC+NO_X$ standards noted in Table 1, we are adopting provisions to include Phase 2 handheld engines in the certification averaging, banking and trading (ABT) program. The combination of the declining Phase 2 handheld standards and the ABT program should allow manufacturers to make an orderly and efficiently transition from their existing Phase 1 engine designs and technologies to those necessary to meet the new Phase 2 requirements and should provide an incentive for the early introduction of clean engines. We believe that the ABT program is an integral part of the Phase 2 $HC+NO_X$ standards being adopted for Classes III, IV, and V. (As noted later, the ABT program does not apply to CO emissions.)

As noted earlier, we are adopting provisions that will add two new classes of small SI nonhandheld engines. Class I–A will cover engines with displacement less than 66cc that are installed in nonhandheld equipment. Class I–B will cover engines equal to or greater than 66cc but less than 100cc that are installed in nonhandheld equipment. Table 3 contains the $HC+NO_X$ standards and CO standards we are adopting for Class I–A and Class I–B engines. The standards contained in today's final rule for Class I–A and Class I–B nonhandheld engines are the same as we proposed in the July 1999 SNPRM. Implementation of the standards for the new classes of Class I–A and Class I–B engines will begin with the 2001 model year. Class I–A and Class I–B engines will also be allowed to participate in the ABT program for small SI engines.

[2] The regulations also prohibit, in the case of any person, the importation of uncertified small SI engines and marine SI engines manufactured after the applicable implementation date for the engine. The regulations also prohibit the importation of equipment containing small SI engines unless the engine is covered by a certificate of conformity. (40 CFR 90.1003(a)(1)(ii) and 40 CFR 91.1103(a)(1)(ii)).

TABLE 3.—PHASE 2 EMISSION STANDARDS FOR CLASS I–A AND CLASS I–B ENGINES

Engine class	$HC+NO_X$ standard (g/kW-hr)	CO standard (g/kW-hr)	Effective model year
Class I–A	50	610	2001
Class I–B	40	610	2001

With today's action, we are also finalizing the provision which will allow manufacturers the option of certifying engines greater than 19 kW and less than or equal to one liter in displacement to the small SI engine Phase 2 regulations beginning with the 2001 model year. Because the power rating of such engines is above 19 kW, we do not currently regulate such engines and therefore the engines are not required to comply with any previously existing emission standards at the federal level. We issued a Notice of Proposed Finding on February 8, 1999, which announced our intent to propose regulations for ''large nonroad SI engines'' and we are currently developing a NPRM for large nonroad SI engines to be issued in late 2000 (see 64 FR 6008). We expect this proposal would be consistent with actions taken for these engines in today's rule.

For the Phase 2 handheld engine program, we are retaining the current test procedure used by manufacturers to certify engines with one modification. The weighting of the two different test modes used for calculating the certification emission levels for handheld engines is being changed to 85 percent wide open throttle and 15 percent idle. (The weighting of the modes for the Phase 1 program is 90 percent wide open throttle and 10 percent idle.)

The Phase 2 standards and the compliance program elements being adopted today require engine manufacturers to consider expected in-use deterioration. In contrast to the Phase 1 program which only regulates the emission performance of engines when new, the Phase 2 program will require manufacturers to account for expected deterioration in emission performance as an engine is used. Manufacturers will be required to evaluate the emission deterioration performance of their engine designs and certify their designs to meet the standards after factoring in the anticipated emission deterioration of a typical in-use engine over its useful life.

Under today's action, an engine manufacturer will select from one of three different useful life categories based on the type of engine and equipment in which the engine is installed. Handheld engine manufacturers can certify for a useful life period of 50, 125, or 300 hours based on design features and the intended use of the application. For Class I–A engines, we are also adopting useful life periods of 50, 125, and 300 hours. For Class I–B engines, we are adopting useful life periods of 125, 250, or 500 hours.

Under the Phase 2 certification program being adopted today, manufacturers are allowed to determine an appropriate methodology for accumulating hours of operation to ''age'' an engine in a manner which duplicates the same type of wear and other deterioration mechanisms expected under typical consumer use which could affect emission performance. We expect laboratory-based bench testing will often be used to conduct this aging operation because it can save time and perhaps money, but actual in-use operation (*e.g.,* trimming grass) will also be allowed. Emission tests will be conducted when the engine is new and when it has finished accumulating the equivalent of its useful life. The engine will have to pass the applicable standards both when it is new and at the end of its designated useful life to qualify for certification. Additionally, the new engine and fully aged engine emission test levels will be compared to determine the expected deterioration in emission performance for engines of this design.

We are also adopting a Production Line Testing (PLT) program for Phase 2 engines covered by today's action. The PLT program is explained in more detail in a following section but, briefly, the intent is to require a sampling of production line engines to be tested for emission performance to assure that the design intent as certified prior to production has been successfully transferred by the engine manufacturer to mass production. The volume of PLT testing required by the manufacturer would depend on how close the test results from the initial engines tested are to the applicable standards. If the initial test results indicate the design is well below the applicable standards, few engines will need to be tested. For those designs where the test results indicate emission levels are very close to the applicable standards, additional tests will be required to make sure the design is being produced with acceptable emission performance.

While the newly adopted Phase 2 compliance program will not require manufacturers to conduct any in-use testing to verify continued satisfactory emission performance in the hands of typical consumers, we are adopting an optional program for such in-use testing with today's action. We believe it is important for manufacturers to conduct in-use testing to monitor the success of their designs and to factor back into their design and/or production process any information suggesting emission problems in the field. While not mandating such a program, today's action will encourage such testing by allowing a manufacturer to avoid the cost of the PLT program for a portion of its product line by instead supplying data from in-use engines. Under this voluntary in-use testing program, up to twenty percent of the engine families certified in a year by a manufacturer can be designated for in-use testing. For these families, no PLT testing will be required for two model years including that model year. Instead, the manufacturer will select a minimum of three engines off the assembly line or from another source of new engines and emissions test them when aged to at least 75 percent of their useful life under typical in-use operating conditions for this engine. The information related to this in-use testing program will need to be shared with us. If any information derived from this program indicates a possible substantial in-use emission performance problem, we anticipate the manufacturer will seek to determine the nature of the emission performance problem and what corrective actions might be appropriate. We plan to offer our assistance in analysis of the reasons for unexpectedly high in-use emission performance and what actions might be appropriate for reducing these high emissions.

Separate from the program allowing manufacturers to perform voluntary in-use testing, we could choose to conduct our own in-use compliance program, either generally or on a case-by-case basis. If we determine that such action is appropriate, we expect that we will perform our own in-use testing to determine whether a specific class or category of engines is complying with applicable standards in use.

All of the general provisions of the Phase 2 compliance program contained in today's action have been adopted as part of California's compliance program for these classes of small engines.[3] Importantly, the testing and data

[3] While the voluntary in-use test program has not been codified in the California ARB Tier 2 rules for these engines, we have discussed the program with the California ARB. The California ARB supports our voluntary in-use test program provisions as contained in today's action.

requirements, engine family descriptors, compliance statements and similar testing and information requirements of these federal Phase 2 handheld regulations are, to the best of our knowledge, the same general compliance program requirements adopted by the California ARB. This will be advantageous to manufacturers marketing the same product designs in California as in the other states, as they would need to prepare only one set of certification application information, supplying one copy to the California ARB for certification in the State of California and one copy to us for federal certification. This similar treatment under the regulations also extends to the PLT program and is also likely to extend to the optional in-use testing program, such that any test data and related information developed for the federal regulatory requirements being adopted today should also satisfy the requirements of the California ARB.

In addition to the Phase 2 provisions highlighted above, today's action includes special provisions for small volume engine manufacturers, small volume engine families produced by other engine manufacturers, small volume equipment manufacturers who rely on other manufacturers to supply them with these small SI handheld engines, and small volume equipment models. These handheld small volume provisions should help to lessen the demonstration requirements and smooth the transition to these Phase 2 requirements. This is especially important for small volume applications because the eligible manufacturers involved may not have the resources to ensure that engines complying with the Phase 2 standards will be available within the time frames otherwise envisioned under these regulations. Without these provisions, we believe the economic impacts to small volume manufacturers would be increased and the possibility of reduced product offering would be greater, especially for those products intended to serve niche markets which satisfy special needs.

Finally, today's action includes amendments to the existing rules for small SI nonroad engines and marine SI engines. First, for small SI engines, we are revising the definition of handheld engine by removing a restriction that may prevent equipment manufacturers from using cleaner, but heavier, engines in certain handheld lawn and garden equipment. Second, we are modifying the applicability of the rule so that a small number of engines used in model aircraft can be considered ''recreational'' and excluded from coverage. Third, we are adopting provisions that would add phase-in flexibility to reduce the regulatory impact on a few very small manufacturers of marine engines. Lastly, the amendments include provisions for both the small SI engine and marine SI rules that closes a potential loophole that could have led to the abuse of special provisions that exist to permit the sale of uncertified engines for replacement purposes.

II. Detailed Description of This Final Rule

The following sections provide additional detail on the provisions of the today's action outlined above.

A. What Are the Emission Standards and Other Related Provisions?

1. Class Structure

With today's action we are retaining the same basic class structure for handheld engines as implemented in the Phase 1 regulations. Phase 2 handheld engines will continue to be categorized as either Class III, Class IV, or Class V engines based on the displacement of the engine.

As noted above, we are adopting provisions for two new classes of nonhandheld engines in today's action. The Phase 1 program separated the small engine category into those intended for use in equipment typically carried by the operator during its use, such as chain saws or string trimmers, referred to as handheld equipment, and those engines normally used in equipment which is not carried by the operator, such as lawnmowers and generators, referred to as nonhandheld equipment. Under the Phase 1 program, there are two classes of nonhandheld engines, Class I and Class II. Class I includes all nonhandheld engines with displacements below 225cc. The July 1999 SNPRM contained a proposal to include two new classes of nonhandheld engines below 100cc. The July 1999 SNPRM provisions were based on comments received from the Engine Manufacturers Association (EMA) and several individual engine manufacturers on the January 1998 NPRM. EMA and engine manufacturers requested the creation of smaller displacement classes of nonhandheld engines for several reasons including the need to fill a void in the equipment market left by products that would no longer be able to utilize 2-stroke engines if the Phase 2 Class I standard as proposed at that time was adopted. Manufacturers asserted the infeasibility of the Phase 2 Class I standard proposed at that time for the smallest engines in the class because of the increased difficulty in reducing emissions with small displacement engines.

The comments we received regarding Class I–A and Class I–B engines generally supported the addition of the new classes of nonhandheld engines. (Additional discussion of the actual standards being adopted for Class I–A and Class I–B engines is included in the following section of today's action.) Based on the fact that it is generally more difficult for smaller displacement engines to meet the same emission standards as larger displacement engines, we continue to believe that the recently adopted Phase 2 Class I standard which is technically feasible and economically viable for the existing larger displacement 4-stroke engines in Class I (which have displacements typically above 125cc and are used primarily in lawnmowers), could be too costly for manufacturers to be achievable for not currently marketed smaller displacement engines that equipment manufacturers assert they need to use in applications requiring the use of much smaller displacement nonhandheld engines. Therefore, we are adopting the proposed provisions to subdivide the Class I engine category by adding two new nonhandheld engine classes and redesignating the span of displacements covered by Class I. Under today's action, Class I–A will include nonhandheld engines below 66cc, Class I–B will include nonhandheld engines equal to or greater than 66cc but less than 100cc, and Class I will cover engines equal to or greater than 100cc but less than 225cc.

In the July 1999 SNPRM, we requested comment regarding the possibility that if the proposed Class I–A and I–B standards were adopted, manufacturers might shift significant production from Class I to the smaller displacement engines. We also requested comment on the potential for 2-stroke engines to meet the proposed Class I–A and I–B standards and the potential for such engines to be used in existing nonhandheld applications such as mowers. We noted that if such a change in the market were to occur, the benefits of the recently finalized Phase 2 program for Class I engines which anticipates a turnover to clean 4-stroke OHV technology would be seriously compromised. Based on the comments submitted on the proposed Class I–A and Class I–B provisions, we do not believe that it is likely manufacturers would shift significant production from Class I to the smaller displacement engines. Neither do we believe that manufacturers could design and market to any appreciable extent significant

numbers of 2-stroke engines in nonhandheld applications.

In response to a request from manufacturers, we included in the July 1999 SNPRM an option for manufacturers to certify engines above 19 kW with displacements less than or equal to one liter to the small SI standards. As noted earlier, such engines are currently unregulated at the federal level. We received comments from one trade group and one manufacturer supporting the proposed provisions. Therefore, we are adopting the provisions as proposed that allow manufacturers the option of certifying engines above 19 kW and less than or equal to one liter in displacement to the small SI engine program beginning with the 2001 model year. It should be noted that if a manufacturer chooses to certify such engines under the small engine program, the engines will need to be certified to the Phase 2 requirements for the appropriate class of nonhandheld engines, which is expected to be the Class II requirements (*i.e.*, engines above 225cc in displacement), for a useful life period of 1,000 hours. We recently issued a Notice of Proposed Finding (see 64 FR 6008) which announced our intent to propose regulations for ''large nonroad SI engines'' (which include these greater than 19 kW but less than one liter engines). We expect to issue a NPRM for large nonroad SI engines in 2000, and to propose that engines greater than 19 kW and less than one liter in displacement meet small SI nonroad engine requirements. If, however, we do not propose and/or adopt such a requirement for these engines as part of the large SI nonroad program, we would expect to consider reasonable approaches to minimizing disruption, as appropriate, to the affected industry. Such approaches would be addressed in the rulemaking process for large SI nonroad engines.

2. Emission Standards and Implementation Schedule

In response to comments submitted on the July 1999 SNPRM, with today's action we are adopting a slightly different schedule of Phase 2 $HC+NO_X$ standards compared to those proposed in the SNPRM. (The phase-in standards are changing from the proposal because we are adopting a four year phase-in schedule with today's action instead of the proposed five year phase-in schedule.) The CO standards being adopted with today's action are the same as proposed in the July 1999 SNPRM. The new Phase 2 standards will begin to take effect with the 2002 model year for Classes III and IV and the 2004 model year for Class V. For $HC+NO_X$, engine manufacturers will be required to meet a declining standard that varies by engine class. As proposed in the July 1999 SNPRM, engine manufacturers will be required to meet a $HC+NO_X$ standard of 50 g/kW-hr for Classes III and IV and 72 g/kW-hr for Class V SNPRM at the end of the phase in. However, the fleet average standards that a manufacturer is required to meet during the phase-in period differ from those proposed in response to comments that have persuaded EPA that a faster phase-in is more appropriate under the Act. Table 1 and Table 2, presented earlier, contain the full schedule of Phase 2 $HC+NO_X$ standards and CO standards, respectively, being adopted today for handheld engines by model year. As described in section II.B., engine manufacturers will be able to use the averaging, banking and trading program to demonstrate compliance with the Phase 2 $HC+NO_X$ standards on average. Engine manufacturers will be required to meet the Class III and Class IV CO standard beginning with the 2002 model year and the Class V CO standard beginning with the 2004 model year. Unlike the HC+NOx standards, the CO standards do not decrease over time, and the averaging, banking and trading program does not apply to the CO standards.

The Clean Air Act at section 213(a)(3) requires us to adopt standards that result in the greatest emission reductions achievable through the application of technology which the Administrator determines will be available, giving appropriate consideration to cost, lead time, noise, energy and safety factors. As a result of information now available, and due to the rapid technological advances the handheld engine industry is making in an effort to design engines which are more environmentally friendly, we have determined that the standards being adopted today are achievable during the timeframe being adopted today. Table 4 summarizes the handheld technologies we conclude are capable of meeting the newly adopted standards by engine class. Note that for the purpose of generating a cost estimate for this rule, a subset of these available technologies were evaluated for their cost impact.

TABLE 4.—POTENTIAL TECHNOLOGIES FOR MEETING THE PHASE 2 STANDARDS FOR HANDHELD ENGINES

Engine class	Technologies
III	—Compression Wave Technology + low-medium efficiency Catalyst. —Stratified Scavenging with Lean Combustion + medium-high efficiency Catalyst. —4-Stroke.
IV	—Compression Wave Technology. —Compression Wave Technology + low efficiency Catalyst. —Stratified Scavenging with Lean Combustion + medium efficiency Catalyst. —4-Stroke.
V	—Compression Wave Technology. —4-Stroke (on certain applications). —Stratified Scavenging with Lean Combustion.

While not all of the technologies discussed above have yet been demonstrated in mass-produced production engines operated under typical in-use conditions, we are confident that these technologies will provide industry with several emission control alternatives for meeting the new Phase 2 standards. Manufacturer prototype testing, California ARB certification information, and testing that we have performed as listed in Chapter 3 of the Final Regulatory Impact Analysis (RIA) demonstrate that currently available 2-stroke and 4-stroke technologies can achieve the newly adopted emission standards, especially if one considers catalysts are available to use along with the 2-stroke engine technologies. In addition to the technologies highlighted in today's action, we have examined though not included in our feasibility and costs analyses other promising technologies that may be available to help manufacturers meet the standards being adopted today. One of these technologies, a new engine design, referred to as DIPS, utilizes direct fuel injection and has shown promise in

achieving HC emissions levels below the standards being adopted today possibly without the use of a catalyst. Another technology is a redesigned spark plug developed by Pyrotek that has been shown to achieve incremental emission HC reductions (at low cost) that could be beneficial for engines which may need slightly more reductions to meet the emission standards being adopted today. Both of these technologies are described in further detail in Chapter 3 of the Final RIA. Finally, we understand that manufacturers are developing electronic fuel injection systems which if successful, should also allow low emissions. However, we have insufficient information at this time to consider this technology in this rulemaking although it may well be available during the 2002–2007 time period during which these standards will take effect.

For 2-stroke engines, John Deere has certified a 25cc trimmer engine outfitted with the compression wave technology (also referred to as the John Deere LE engine) under the California ARB's Tier 2 program for small SI engines. The engine, which would be a Class IV engine under our classifications, was certified to a $HC+NO_X$ emissions level of 61 g/kW-hr at a useful life of 125 hours. In addition, John Deere adapted two Class V chainsaw engines and achieved $HC+NO_X$ emissions below the Class V standard of 72 g/kW-hr. Both of the chainsaw prototype applications did have significantly lower power with the compression wave technology retrofitted to the engine. However, the revised engine designs had been developed in a very short period of time and the fuel metering system had not been optimized for either of the engines, which would explain the loss in power. We believe, however, John Deere's efforts to retrofit the compression wave technology on these two Class V engines demonstrates the potential to apply the technology to Class V applications. Other manufacturers have also certified a number of advanced 2-stroke engine designs in California to meet the California ARB's Tier 2 $HC+NO_X$ standard for model year 2000. Among these engines, Komatsu Zenoah has certified two stratified scavenging with lean combustion engine designs at 66 g/kW-hr $HC+NO_X$ at a useful life of 300 hours with a 25.4cc engine and 53 g/kW-hr $HC+NO_X$ at a useful life of 300 hours with a 33.6cc engine. Stihl has certified an engine at 66 g/kW-hr $HC+NO_X$ at a useful life of 300 hours for a 56.5cc engine (*i.e.*, Class V under our classifications).

While neither John Deere's compression wave technology engine nor the Komatsu Zenoah stratified scavenging with lean combustion engines noted above currently meets the newly adopted emission standards alone, John Deere has informed us that perhaps 50% of their Class IV applications are expected to comply with the standards while relying on the compression wave technology only. This may be due to their expectations for further improvement to that technology and their ability to take advantage of averaging to reduce costs. Thus, the addition of a catalyst on at least some applications, along with further engine improvements should allow them to demonstrate compliance with the Phase 2 standards. Allowing for a 20% compliance margin to account for variances within production runs and less precise manufacturing from prototype models to production runs, the target certification level in Classes III and IV is estimated to be around 40 g/kW-hr $HC+NO_X$ for the technology prototypes (*i.e.*, certification engines) at the end of their regulatory useful lives. The required catalyst conversion efficiencies for these engines to meet the target level noted above have been estimated using information from a number of sources. Engine-out emissions (without catalyst) at the end of the useful life are taken from the California ARB's Tier 2 certification data. $HC+NO_X$ emission deterioration information for the compression wave technology is also obtained from the California ARB certification data, which states the deterioration for the compression wave technology is 1.1. $HC+NO_X$ emission deterioration information for the stratified scavenging with lean combustion is estimated from EPA test data (Docket A–96–55 Item VI–A–01) and is assumed to be 1.0. Finally, a 30% deterioration in catalyst efficiency is assumed as the catalyst goes from new to the end of the certification useful life. Using this information, it is estimated that, without improvements in engine emission performance, the new engine catalyst conversion efficiency for the 25cc compression wave technology engine would need to be approximately 50% (30 g/kW-hr $HC+NO_X$). For the 25.4cc stratified scavenged with lean combustion engine a 57% (38 g/kW-hr $HC+NO_X$) efficiency catalyst would be needed and for the 33.6cc stratified scavenged with lean combustion engine a 36% (19 g/kW-hr $HC+NO_X$) efficiency catalyst would be needed, given the current level of engine-out emissions.

Concerns regarding catalyst heat management need to be addressed, especially in cases where high levels of $HC+NO_X$ need to be converted in a catalyst. However, given the fact that catalysts used on currently certified handheld engines have been shown to have conversion efficiencies in the range cited above, the amount of lead time available to manufacturers prior to the implementation of the Phase 2 standards will be sufficient for manufacturers to implement additional engine and equipment improvements such that catalysts may be utilized on handheld engines without catalyst heat management concerns. Further, we believe that John Deere's, Ryobi's, and Echo's support of the 50 g/kW-hr standard supports the conclusion that if catalysts are used then catalyst heat issues can adequately be addressed. Although the current California standards are somewhat less stringent than the federal standards being adopted today, the fact that catalysts are being used in some of these California certified applications demonstrates that manufacturers have the ability to design equipment adequately addressing catalyst temperature issues.

We believe that the leadtime available before implementation of this rule and the period during phase-in to the final standards will allow additional improvements in engine-out emission performance. These improvements will include refinements of the fuel metering technology, improvements in combustion chamber and piston head design, and improvements in spark ignition via such devices as the Pyrotek spark plug mentioned earlier. Lastly, as the test data from the California ARB certification list shows, emissions of larger engines (as illustrated in comparison of the 25.4cc and 34cc stratified scavenged with lean combustion engines) decrease with increased engine size and therefore catalyst conversion requirements (and catalyst temperatures) will not be as high with larger Class IV engine displacements. It should be noted that for Class V (engines with displacement above 50cc), we do not believe that manufacturers will need to employ catalysts to meet the standards being adopted today, and therefore catalyst heat management concerns should not be a concern.

Although 2-stroke engines currently dominate the handheld engine market, we have determined that 4-stroke engines have the potential to achieve a significant share of the handheld market in the future. Ryobi, one of the biggest manufacturers of handheld equipment, has commented that it intends to

expand the number of 4-stroke models available under the Phase 2 program. Three manufacturers have recently certified 4-stroke engines with the California ARB for the 2000 model year Tier 2 program that are used in handheld applications. Fuji Heavy Industries has certified a 4-stroke engine at 17 g/kW-hr $HC+NO_X$ for a useful life of 125 hours with a 24.5cc engine. Komatsu Zenoah has certified a 4-stroke engine at 31 g/kW-hr $HC+NO_X$ for a useful life of 300 hours with a 26.4cc engine. Ryobi has also certified two different 4-stroke engine families at 15 g/kW-hr $HC+NO_X$ for a useful life of 50 hours and at 21 g/kW-hr $HC+NO_X$ for a useful life of 300 hours. Both of these designs are on a 26.2cc engine. All of the 4-stroke engines noted above would be expected to meet the standards adopted today without use of a catalyst.

In the July 1999 SNPRM, we requested comment on a number of items related to the standards and the technologies we considered in developing the reproposed standards. The bulk of the comments received on the July 1999 SNPRM focused on the technologies, standards and implementation schedule proposed in the SNPRM. The following paragraphs summarize the major comments received and our responses. The full set of comments and more detailed responses related to the technologies, standards and implementation schedule can be found in the Summary and Analysis of Comments Document.

John Deere, Ryobi, and the California ARB supported the reproposed standards and suggested an additional change in the $HC+NO_X$ standard for Class V to 50 g/kW-hr. John Deere asserted that compression wave technology is available for meeting a 50 g/kW-hr $HC+NO_X$ standard in all classes. Ryobi commented that the 4-stroke engine is capable of meeting a 50 g/kW-hr $HC+NO_X$ standard in all classes. One additional engine manufacturer, Echo, supported the standards as proposed. A number of other engine manufacturers opposed the $HC+NO_X$ standards, including Husqvarna/Frigidaire Home Products (FHP), Stihl, and Tecumseh. Technical feasibility concerns regarding the technologies noted in the July 1999 SNPRM were the focus of comments from those in industry who opposed the reproposed $HC+NO_X$ emission standards. (The July 1999 SNPRM noted that technologies such as John Deere's LE engine with a catalyst, Komatsu Zenoah's stratified scavenging with lean combustion engine with a catalyst, and 4-stroke engines are all technologies which have shown or have the potential to achieve the proposed standards on all or a portion of the engines covered in this rulemaking. For Class V engines, the July 1999 SNPRM noted that catalysts would likely not be required to meet the standards.) Two handheld industry associations supported the CO standards as proposed. Several months after the close of the comment period for the July 1999 SNPRM, we received comments from the Sierra Club and from the State and Territorial Air Pollution Program Administrators/ Association of Local Air Pollution Control Officials (STAPPA/ALAPCO) asking us to adopt more stringent standards for Class V, and to expedite the effective dates for all of the handheld standards, based on their belief that manufacturers could meet such standards on a more accelerated schedule. We also received comments from equipment users and representatives of the forestry industry expressing concern about the potential impact of these regulations on safety, in particular a concern that chainsaws could cause a fire hazard if their exhaust systems became very hot.

With regard to John Deere's compression wave technology, we requested comments on the likelihood that cost-effective solutions can be made available over the next two to three years across the full range of handheld engines and applications. John Deere, Stihl, and Husqvarna/FHP commented on this item. While John Deere had nearly completed a successful prototype on a Class IV trimmer engine prior to the July 1999 SNPRM, it was constructing a preliminary prototype for a 70cc Class V chainsaw engine during the comment period and was able to submit a video and emission test results showing successful preliminary application of the technology to a Class V chainsaw in their comments on the July 1999 SNPRM. Stihl and Husqvarna/ FHP also each submitted comments stating that they conducted individual short term studies on their interpretation of the compression wave technology on Class V and Class IV chainsaw engines, respectively. As detailed in their comments, the results of their limited studies lead Stihl and Husqvarna/FHP to believe that the technology is not feasible based on a number of issues with their chainsaw prototypes. After the close of the comment period, John Deere submitted additional feedback on the analysis performed by Stihl and Husqvarna on their respective prototypes. While John Deere did address the majority of each company's concerns listed in their reports, John Deere also acknowledged that more development time is needed in order to optimize the system for Class V applications and to determine if an additional lubrication system will be necessary on chainsaw and similar application engines. Nevertheless, based on the fact that John Deere has been successfully developing the technology for approximately one year, and has shown us that it can in this relatively short period of time, address the majority of issues that have been raised by Stihl and Husqvarna, we have concluded that the compression wave technology holds a great deal of promise and that industry will be able to address all issues raised in the lead time provided under today's rule.

Under today's action, Class V engines have until 2004 to start certifying, and this is sufficient time for engine manufacturers to develop the compression wave technology, or stratified scavenging with lean combustion, or develop their own technology, for Class V engines. Therefore, we conclude that the issues raised by Stihl and Husqvarna regarding technological feasibility do not undermine the achievability of the Class V standards, since adequate technology will be available.

With regard to the more stringent Class V standard supported by John Deere, Ryobi, and the California ARB, we do not believe the existing information provides us with a high enough degree of certainty to determine that a tighter standard is feasible for all applications within the leadtime provided by the rule. As noted earlier, John Deere has submitted information on two Class V engines equipped with the compression wave technology. The test results show that emission levels close to the standard are currently achievable on the larger engines as well. However, as noted earlier, the redesigned engines were not fully developed to address all issues, including emissions deterioration over the longest useful life category to which Class V engines are expected to certify. Based on John Deere's experience with applying the compression wave technology to its 25cc engine, at least in the near term, emissions will likely increase as the system is redesigned to address issues needed to make the engine production ready and deliver maximum performance. In addition, while we are optimistic that low deterioration can be demonstrated, the deterioration characteristics of the compression wave technology out to 300 hours remain unknown at this time. Due to these concerns, we cannot be as certain that Class V engines can achieve a standard of 50 g/kW-hr as is being

adopted for Class III and IV engines and applications within the timeframe of implementation of the Class V standards. Therefore, for Class V we are adopting the 72 g/kW-hr $HC+NO_X$ standard as proposed. It should be noted that the Class V standards during the phase-in period differ from those proposed because of the revised four year implementation schedule described below.

With regard to the provisions of the patent as offered by John Deere for the compression wave technology, the licensing fee printed in John Deere's literature had been claimed to be excessive by some in the industry. We therefore requested comment on the licensing fees suggested by John Deere, the impact such fees would have on competition given the cost for other technology options, and the level of the licensing fee necessary to allow this licensed technology to be a more cost effective option for other manufacturers. Manufacturers claimed that the provisions of the current licensing agreement offered by John Deere are unworkable since they include provisions that development work is the responsibility of the licensee, and any patentable ideas a manufacturer develops become the property of John Deere. One manufacturer stated that the small engine industry typically bases royalties (usually 1 to 4%) on the cost of the component and not the cost of the equipment as John Deere has established. In addition, typical per unit profits in the consumer market are claimed by some manufacturers to be well below the minimum fee of $7.50 proposed by John Deere and, according to these manufacturers, a license fee of $7.50 would drive out competitors from the market. While the provisions of the licensing agreement currently published by John Deere may not be acceptable to other manufacturers, especially those that compete directly against John Deere in the consumer market, we are confident that future competing technologies, such as the stratified scavenging with lean combustion engine and the 4-stroke engine, will lead to lower licensing fees and perhaps licensing agreement provisions for all technologies which the licensee will find more favorable. Therefore, we do not view the initial licensing fee proposal offered by John Deere to be an impediment to the availability of LE technology for purposes of achieving the standards adopted today. The fact that no manufacturer has agreed to pay the license fee as proposed by John Deere suggests that it is too high and will necessarily have to be lowered. However, we do not know what the ultimate level of the licensing fee will be and therefore, for cost purposes, we have assumed the levels proposed by John Deere. Lower license fees would obviously result in lower overall costs of this technology and reduced impacts on consumer prices.

With respect to other low emission technologies, we requested information on the idea that 4-stroke engines could be used for the majority of Class IV applications. The July 1999 SNPRM also stated that it is likely the 4-stroke would be applicable to the smallest of Class V engines. We received comments questioning the applicability of 4-stroke engines in all handheld applications and expressing concerns about the heavy weight of the 4-stroke engine design, its slow acceleration, lower power, decreased durability due to the increased number of parts compared to 2-stroke engines, and the need for new manufacturing facilities for 4-stroke engines. Additional comments also questioned whether 4-stroke engines can be useful to the commercial user. Other comments supported use of 4-stroke engines and noted that they are currently used to power trimmers and brushcutters and weigh little more than comparable 2-stroke engines. In addition, commenters noted that 4-strokes provide more power in the lower engine speed range and no oil/fuel mixing is required.

Considering all of these comments and the fact that manufacturers are already certifying low-emitting 4-stroke engines for use in handheld applications under the California ARB's Tier 2 program, we have concluded that the 4-stroke engine has a significant place among the technologies capable of meeting the finalized standards. However, 4-stroke engines may not be the manufacturer's preferred choice for all engine displacements or equipment applications. While the 4-stroke is currently being applied in Class IV applications, such as trimmers, it may be a less desirable solution for Class III due to the cost of developing whole new 4-stroke engines for the few engine families in this class. (Class III applications tend to be the lowest priced consumer products.) The low volumes of the majority of Class III engine family sales may make the 4-stroke engine a less cost effective solution than other technologies unless the engine block and components can be adapted from a larger Class IV engine production line. Some manufacturers may find the cost of the 4-stroke technology on Class III equipment to be too large compared to the retail price, especially given the consumer market focus for these engines. For Class V engines we are confident that the 4-stroke engine design can be adapted to equipment in the lower displacement Class V engines. However, 4-stroke engines have not been demonstrated in the larger Class V applications where manufacturers have especially expressed concerns over potential increased weight, ergonomic problems, and the need to assure sufficient lubrication. To our knowledge, the manufacturers who currently market large displacement Class V equipment in the United States have no experience in designing and producing 4-stroke engines for handheld equipment, adding to their difficulty in applying this technology. Therefore, we conclude that 4-stroke technology will be cost-effective and widely available for Class IV engines, will be available but possibly less cost-effective for Class III engines, and will be available for at least the lower displacement Class V engines under the standards adopted today. However, we cannot similarly predict the applicability of 4-stroke technology for the largest displacement Class V engines within the time constraints for implementation of Class V standards.

For stratified scavenging with lean combustion engine designs, comments were received asserting the inability of current designs with a catalyst to meet the standards proposed in the July 1999 SNPRM. As suggested evidence that lean combustion designs could not meet the proposed standards, one manufacturer stated that Kawasaki recently introduced a stratified scavenged 2-stroke engine with a catalyst that obtains 46 g/hp-hr (61.3 g/kW-hr) $HC+NO_X$. Another manufacturer stated that the suggestion that stratified scavenging technology is a feasible way to achieve the proposed standards for Classes III and IV is unfounded. It cited the results of our recent testing that showed a prototype Komatsu Zenoah engine exceeded the U. S. Department of Agriculture's Forest Service (USFS) temperature requirements even without a catalyst. Komatsu Zenoah did not submit any comments on the July 1999 SNPRM. However, Komatsu Zenoah has developed 25.4cc and 33.6cc versions of this technology and certified them with the California ARB under the Tier 2 program at $HC+NO_X$ levels of 66 g/kW-hr for a useful life of 300 hours and 53 g/kW-hr for a useful life of 300 hours, respectively. (They are also certified to meet the USFS temperature requirements.) Neither of these engines is equipped with a catalyst. While our recent testing of their prototype trimmer did reveal concerns of high surface

temperature of the exhaust housing, observation of the current muffler/housing arrangement revealed that the design was not optimized and that there was room for improvement in its design. While the California ARB certification emissions data shows that current engines equipped with stratified scavenging with lean combustion are emitting at levels above the 50 g/kW-hr $HC+NO_X$ standard adopted today for Class III and IV, our emission test data on Komatsu Zenoah's 25cc stratified scavenging with lean combustion engine with one medium/high and one medium efficiency catalyst ranged from 28 to 39 g/kW-hr $HC+NO_X$, respectively. Using the data associated with the catalyst that yielded 28 g/kW-hr, and assuming a 30% deterioration of the catalyst and 10% deterioration of the engine, the resultant emission level in-use is estimated to be 48 g/kW-hr. While this result shows compliance with the standards adopted in this rulemaking can already be achieved with this technology, it is likely that emissions will need to be lowered even more either through engine improvements or better catalyst designs to allow for a compliance margin with production engines. Compliance with the USFS temperature requirements may also need to be further addressed. However, several years still remain before full compliance with these standards is required and we are confident that further development will bring this technology within reasonable emissions for use in meeting these standards. In addition, our testing was conducted on the 25.4cc engine, and application of this technology to larger displacement engines will result in lower emissions. This is seen in the California ARB certification results where emissions on the 33.6cc engine are lower than the emission on the 25.4cc engine. Therefore, we conclude that stratified scavenging with lean combustion plus a catalyst will be an available technology for meeting the Class IV standards.

In regard to application of the stratified scavenging with lean combustion technology to Class V engines, we expect that the decrease in emissions with this technology in larger engines, as was shown in the comparison of the 25.4cc to the 33.6cc engines, to continue due to the favorable surface to volume ratios in larger displacement engines. This will be beneficial because catalysts should not need to be utilized on Class V engines and the degree of enleanment can be decreased and therefore provide the amount of lubrication needed in high speed applications, such as chainsaws. Therefore, we believe the technology will also be available for Class V engines under the standards adopted today. We conclude that the stratified scavenging with lean combustion technology should be available for Class III engines as well, but manufacturers will need to address the unfavorable surface to volume ratios in the smallest engines which tend to result in higher g/kW-hr emission levels, which suggest the need for higher efficiency catalysts.

We requested comment on the status of catalyst technology development for handheld engine applications and the likelihood that catalysts will be able to be applied to the full range of handheld engine applications to meet the proposed standards and appropriate safety requirements. Three engine manufacturers commented on catalysts, one of which has three catalyst equipped trimmers in the marketplace, and one catalyst industry trade organization commented. Two manufacturers commented that heat dissipation is an important issue and claimed that meeting the USFS and UL–82 requirements will be difficult on all engine applications. Of particular concern are equipment such as chainsaws where the ability to redesign the engine housing is limited due to weight and power issues. A number of parties related to the timber industry have also submitted comments regarding their concern over potential forest fires with the use of catalysts on Class V commercial equipment. In regard to the application of catalysts in Classes III and IV, a variety of catalyst substrates exist in the marketplace today, including the traditional honeycomb substrate, a plate substrate (as currently used in several trimmer applications), and a circular wire mesh substrate. Some catalyst designs are able to achieve higher conversion percentage than others based on the available surface area of the catalyst. Data from our testing of two engines with low engine-out emissions retrofitted with catalysts (a Komatsu Zenoah stratified scavenging with lean combustion engine retrofitted with a flat plat and honeycomb catalyst, and a John Deere compression wave technology engine retrofitted with a prototype metallic sponge catalyst) have shown catalyst conversion efficiencies of 45% or higher.

The main concern raised by manufacturers with the use of catalysts is safety and compliance with the USFS temperature requirements. Higher conversion efficiencies of the catalyst and higher exhaust flow rate (which tends to increase with engine size) both can result in higher catalyst and exhaust gas temperatures. The needed conversion efficiency of the catalyst and available cooling are factors that need to be addressed in order to successfully apply catalysts to small engines. While catalyst and muffler designs can influence the conversion efficiency, the ability to cool the muffler is largely dependent on the application. Leaf blowers can blow air past the muffler, and thereby can achieve a high degree of cooling. Trimmers typically have ample available space around the muffler and therefore can be designed to handle a certain amount of additional cooling by extending the muffler housing out beyond current equipment designs. (It should be noted that there are a number of such handheld applications currently certified, both federally and with the California ARB, that employ catalysts and also comply with the USFS temperature requirements.) Chainsaws on the other hand have compact packaging requirements and therefore have less flexibility in being able to handle increased amounts of cooling.

The power of an engine will influence the amount of heat that is generated in a catalyst. The general trend is that while larger engines produce more power, they also have larger surface to volume ratios which typically means lower engine out emissions (on a g/kW-hr basis), therefore decreasing the needed efficiency of a catalyst to obtain a given emission standard in g/kW-hr. Therefore, in regards to various engine classes and applications, we conclude that because the large majority of Class III engines are trimmers, they have the capability to easily incorporate a low- to medium-efficiency catalyst and that any additional heat can be managed by muffler and muffler housing redesign. Class IV incorporates a large range of engine sizes and applications from trimmers to chainsaws. The low emitting 2-stroke engine technologies that will be available for these engines reveal that, except in the case of 4-stroke engines, a catalyst may be needed to certify to the emission standards being adopted today. The major sales application in Class IV is trimmers and, as with Class III, this application will be able to incorporate a fair degree of cooling with muffler and muffler housing redesign. Blowers will also be able to incorporate a catalyst with sufficient ability to achieve a high degree of cooling. Chainsaws using Class IV engines will be limited in the degree of catalyst conversion based on the tight packaging. However, such applications should still be able to meet the standards through controlling

engine out emissions and the use of a catalyst. Additionally, averaging, banking and trading gives the manufacturer additional flexibility. Averaging, banking and trading can assist a manufacturer who may have Class IV chainsaws, or other more difficult cooling applications, in need of emission reduction by allowing the manufacturer to, for example, produce a chainsaw without a catalyst (thereby forgoing the cost and lead time associated with catalyst and cooling redesign) and, if emitting above the standard, offset these excess emissions with credits from lower emitting trimmers and blowers equipped with catalysts. With regard to Class IV 4-stroke engines, based on the certification data submitted by manufacturers to the California ARB, we believe that such engines will not require the use of a catalyst to meet the standards being adopted today and therefore will not have any heat issues that need to be addressed. Finally, with regard to Class V engines, the standards being adopted today have been set at levels that are not expected to require the use of catalysts. Therefore, Class V applications should not have any catalyst heat issues that need to be addressed.

In the July 1999 SNPRM, we requested comment on the appropriateness of the proposed two year delay for Class V engines. We received comments on the phase-in schedule for the Phase 2 standards for all classes from two manufacturers (with relatively small number of engine families) recommending a shorter implementation schedule of one year or three years beginning in 2002 for all classes. The California ARB also requested a more expeditious timeline, recommending nationwide phase in of the standards within five years after the implementation of California's Tier 2 standard which took effect January 1, 2000. Sierra Club and STAPPA/ALAPCO also asserted that the standards can be met by all engines earlier than we proposed. One additional manufacturer (with a relatively large number of engine families) indicated that the timeline is not long enough to develop new technologies for the 50 g/kW-hr and 72 g/kW-hr standards.

As noted earlier, in response to comments submitted on the July 1999 SNPRM, with today's action we are adopting a shorter phase in schedule than we proposed in the SNPRM. We are finalizing a four year implementation schedule instead the five year schedule proposed in the July 1999 SNPRM. Each manufacturer's position with regard to implementing new technologies is unique. While some manufacturers have a small number of families, or have sales heavily dominated by one or two large engine families, other manufacturers have many families and do not have sales dominated by any specific engine family. Therefore, in determining the appropriate implementation schedule, we must balance the need for those manufacturers which have large numbers of families to have adequate time to address all of their families against the environmental benefit of achieving emission reductions as soon as possible. Based on the number of families currently certified by small SI engine manufacturers, we have determined that a four year implementation schedule of the Phase 2 standards is feasible, especially when taking into consideration the benefits of the averaging, banking, and trading program as well as the flexibilities provided for small volume engine manufacturers and small volume engine families. Some commenters requested us to adopt an even more aggressive schedule than a four year phase-in. However, we believe the leadtime before the standards are scheduled to take effect is appropriate. The $HC+NO_X$ standards being adopted today for Class III and Class IV are more stringent than the California ARB's $HC+NO_X$ standards for these engines (*i.e.,* 72 g/kW-hr for engines 0–65cc with the exception of exempted applications), on which industry had been focusing and developing technologies over the past few years, and will necessitate additional effort and time to assure compliance. Additionally, these will be the first low emission standards to apply to many of the Class V engine families which are used in certain farm and construction equipment applications and are exempted from meeting the California ARB standards. In addition, we believe that industry will benefit from additional lead time since in the near term they will be finishing development of products for the California market that meet the California ARB Tier 2 emission standards for small SI engines. Furthermore, we believe the schedule of standards being adopted today will allow manufacturers to sell their engines designed to meet the California ARB Tier 2 standards nationwide for a number of years, recouping the investments made for such designs, while redesigning their product offerings to meet the proposed $HC+NO_X$ standards on average. Finally, because most of the Class V engines are exempt from the California ARB Tier 2 requirements, and because the manufacturers of most Class V engines also have significant numbers of Class IV engines to redesign, we are retaining the delayed implementation schedule for Class V engines as proposed, as modified to accommodate a four year phase-in period.

In addition to the standards contained in the July 1999 SNPRM, we requested comments on the costs, feasibility, and other effects of complying nationwide with a 72 g/kW-hr $HC+NO_X$ standard for all three classes of handheld engines. Specific areas on which we requested comment included the engine designs and technologies that would be used to comply with a 72 g/kW-hr $HC+NO_X$ standard, the cost of adopting such technologies (both relative to engines currently certified under the Phase 1 program and as an extension of production of California compliant engines), and the potential for such Class III and Class IV engines to be modified to meet a 50 g/kW-hr $HC+NO_X$ standard. We also requested comment on an alternative set of standards (72 g/kW-hr for Classes III and IV and 87 g/kW-hr for Class V) supported by a number of engine manufacturers in previous discussions with us. In response to these requests, Husqvarna/FHP and Stihl submitted comments supporting the standards of 72 g/kW-hr for Classes III and IV and 87 g/kW-hr for Class V noting that technologies they were selecting to meet those levels for purposes of meeting the California ARB standards would not be able to be modified to meet the reproposed standards of 50 g/kW-hr for Classes III and IV and 72 g/kW-hr for Class V. Husqvarna/FHP also submitted a study performed by National Economic Research Associates (NERA) examining the cost effectiveness of the standards supported by Husqvarna/FHP (relative to the Phase 1 standards) and the cost effectiveness of the standards contained in the July 1999 SNPRM (relative to the standards supported by Husqvarna/FHP). The results of the NERA study suggested that the cost effectiveness of the standards supported by Husqvarna/FHP relative to Phase 1 were significantly lower than the cost effectiveness of the reproposed standards (relative to the standards supported by Husqvarna/FHP). For more discussion of this study, including our response, see section III.B. below.

We note that in the course of this rulemaking we have proposed and considered a variety of alternative approaches to the Phase 2 handheld program, and that our thinking has evolved in parallel with the industry's

recent and rapid technological development. In many respects, our developing rule would become more stringent with each proposed approach, but in many others it would become less so. For example, our March 1997 ANPRM and our January 1998 NPRM reflected significantly less stringent proposed standards that would phase in according to production percentages, with all three handheld classes having to meet the final standards by 2005. Under that alternative approach, there would have been a mandatory in-use testing program, and no ABT program. Under the ANPRM, there were no flexibility provisions under consideration, and we would have committed to conducting a technology review for possibly more stringent Phase 3 standards by 2002. Under the NPRM, the proposed flexibility provisions would have applied much more narrowly for ''small volume'' engine families, equipment manufacturers, and equipment models.

However, as some manufacturers' technical options for reducing emissions from handheld engines rapidly and dramatically increased over the rulemaking, thereby increasing the amount of emissions reduction achievable from handheld engines in general, we developed additional alternatives and refined and/or eliminated earlier considered alternatives. This was driven by Clean Air Act section 213(a)(3)'s requirement that our rule achieve the greatest degree of emissions reduction achievable through the application of technology that we determine will be available within the lead time provided by the program, and by our developing understanding of what kind of program would be needed in order to ensure those emissions reductions are obtained. For example, we now know that the initially considered standards in the ANPRM and NPRM are not sufficiently stringent to meet the requirements of the Act, as they were premised on a much more limited set of technological options than we now know will be available.

Similarly, while some manufacturers have continued to advocate the standards of 72/72/87 g/kW-hr for Classes III–V that we were considering in late 1998, based on the continuing development of clean technology by other manufacturers we have determined that such standards would also fall short of meeting section 213(a)(3)'s requirements, in that they would result in losing approximately 13 percent of the emissions reduction achieved by the final standards using technology we have determined will be available and would not prompt all manufacturers to shift to these more innovative and cleaner engine technologies. This is because standards of 72/72/87 g/kW-hr could be met, indefinitely, without having to convert to the available technology options that support our final standards, and the substantial emission reduction benefits of converting to those technologies would be lost. In order to adopt the 72/72/87 g/kW-hr standards that these particular manufacturers support, we would have to conclude that the technologies underlying standards of 50/50/72 g/kW-hr will not be available in the lead time provided by the rule considering costs, safety, energy, and noise impacts, even in the face of evidence supplied by other manufacturers that these technologies and the more stringent standards are achievable. Since we do not believe we could validly reach such a conclusion and still meet the requirements of the Clean Air Act, we must eliminate the manufacturer-supported standard set of 72/72/87 g/kW-hr as a potential alternative that achieves the objectives of the rule.

While it may be true that the technologies certain manufacturers have been developing to meet the California ARB's Tier 2 standards will not be capable of meeting the tighter standards being adopted today, we have concluded that the standards being adopted today are the most appropriate standards given the requirements of section 213(a)(3) of the Clean Air Act, which requires our standards for nonroad engines and vehicles to achieve the greatest degree of emission reduction achievable through the application of technology which the Administrator determines will be available, giving appropriate consideration to cost, lead time, noise, energy and safety factors. This statutory requirement is a technology-forcing provision that reflects Congress' intent that our standards encourage manufacturers to shift their production to more innovative, environmentally friendly technologies. It does not mean that our standards should be able to be met by all currently used technologies or preclude our standards from rendering less innovative and environmentally beneficial technologies obsolete. In addition, as described later in section III.B., the cost effectiveness of the adopted standards (relative to the currently applicable Phase 1 standards) is in the range of other nonroad programs we have adopted in recent years. It should also be noted that manufacturers who have invested in technologies not capable of meeting the Phase 2 standards being adopted today, but capable of meeting the slightly less stringent California ARB $HC+NO_x$ standard of 72 g/kW-hr, will still be able to certify such technologies under the Phase 2 program and earn credits in the ABT program during the transition years. Such credits will help them as they transition their entire selection of engines to meet the Phase 2 standards being adopted today. Manufacturers who have not yet developed compliant technologies can learn from the technologies already developed and/or expand the application of these technologies to their own production lines.

With regard to emissions of particulate matter (PM), the July 1999 SNPRM did not propose any standards. Nor did the SNPRM take any position regarding whether such standards would be appropriate. However, we requested information on PM emissions from handheld engines and the need for PM standards for small SI nonroad engines under section 213(a)(4) of the Clean Air Act. Two industry associations commented that they did not support establishing PM limits. The California ARB stated it recommend the study of PM and toxics from handheld engines and that a study include the classification and ranking of the toxicity of emissions from various 2-stroke designs compared to diesel PM emissions. We are not prepared to establish PM standards under section 213(a)(4) of the Clean Air Act at this time. However, we have agreed with other parties that a PM and hazardous air pollutant (HAP) test program should be conducted (see 62 FR 14746). The Portable Power Equipment Manufacturers Association (PPEMA), in cooperation with us, has agreed to conduct a test program to evaluate and quantify emissions of PM and HAP including, but not limited to, formaldehyde, acetaldehyde, benzene, toluene, and 1,3 butadiene. We anticipate that testing will be conducted on Phase 2 technology handheld engines, with a sufficient magnitude of engines tested to represent the range of new basic technologies used to comply with the Phase 2 engine standards being adopted today. We expect that the information generated by this program will be useful in informing any future consideration of PM or HAP standards for small SI engines.

In the July 1999 SNPRM, we proposed the addition of two nonhandheld classes and standards for each class that would be implemented upon the effective date of the final rule. We specifically requested comment on the assumption

that 2-stroke engines would not proliferate into these new classes, on the level of the proposed standards, and the feasibility of achieving tighter emission standards with OHV, SV and 2-stroke engines. We received a number of comments related to the proposed Class I–A and Class I–B provisions. In general, engine manufacturers supported the proposed program for Class I–A and Class I–B engines, including the proposed standards. One engine manufacturer commented that we should consider tightening the standards because catalysts are more practical on nonhandheld applications. In terms of concern of 2-stroke lawnmowers proliferating into these new classes, several engine manufacturers stated that the power requirements of the lawnmower will not allow such small engines to be used in the application. (Under our Phase 1 program, engine manufacturers are allowed to certify a limited number of 2-stroke engines for use in lawnmowers to the handheld engine standards through the 2002 model year. Beginning with the 2003 model year, such engines will be required to meet the applicable nonhandheld engine standards.) One manufacturer commented that the standards are so low in the proposed classes that the only 2-stroke engine likely to be able to meet such standards in applications is a 2-stroke with fuel injection, which would be prohibitively expensive and therefore commercially unrealistic. Finally, one manufacturer that currently certifies an engine that would be considered a Class I–B engine under the proposed changes, submitted comments suggesting that we consider a short delay in implementing the Class I–B standards because of difficulty in recertifying current engines in a such short period of time.

With today's action, we are adopting the Class I–A and Class I–B standards as proposed. Table 3, presented earlier, contains the Phase 2 standards being adopted for Class I–A and Class I–B engines. Based on the comments submitted by manufacturers, we do not believe there is any need to be concerned at this time over the possibility of 2-stroke engines proliferating in these nonhandheld engine classes. With regard to the issue of tighter standards through the application of catalysts raised by one manufacturer, we believe that issue should be addressed in future rulemakings that affect all nonhandheld engines, since the current standards for Phase 2 nonhandheld engines were set at levels that did not consider the use of catalysts. With regard to the implementation date of the new standards, we are adopting a slight delay for implementation of the Class I–A and Class I–B standards to the 2001 model year. Under the provisions of the July 1999 SNPRM, implementation of the Class I–A and Class I–B standards would have begun upon the effective date of the final rule, which is 60 days after publication in the **Federal Register**. This would have meant a manufacturer would have to immediately recertify current Phase 1 designs that fall under the 100cc displacement cutoff for Class I–A and Class I–B. We do not believe this is necessary given the limited number of engines expected to covered by these provisions. Therefore, under today's action, manufacturers may wait until the 2001 model year to certify engines below 100cc to the Class I–A and Class I–B provisions.

We received comments from a large number of logging related companies requesting an exemption for professional and commercial chainsaws above 50cc from the Phase 2 regulations. The parties expressed concerns that increased weight could lead to operator fatigue and a greater risk of injury, about power loss, cost, limited impact of such equipment on the environment, and forest fire/safety concerns from catalysts. They also noted these applications are already subject to Phase 1 requirements. Under today's action, handheld engines used in professional and commercial chainsaws above 50cc (i.e., Class V engines) will be required to meet the Phase 2 standards. We are aware of the impact that increased weight can have on a logger that utilizes the equipment on a regular basis as well as the concern over the increased risk of potential forest fires with the use of catalysts. However, we conclude that manufacturers of engines used in professional chainsaws will be able to meet the standards being adopted today for Class V through the use of technologies such as the stratified scavenging with lean combustion technology or compression wave technology which do not have significant impacts on equipment weight or power. In addition, the estimated increase in equipment cost due to the Phase 2 standards compared to the current cost of such equipment is estimated to be at or below 10 percent. With regards to the use of catalysts on these applications, we believe the standard for Class V engines being adopted today and the technologies expected to be available for meeting the standards will not require the use of catalysts on these engines. Therefore the increased exhaust temperature concerns noted by commenters are not expected to be an issue for these engines.

As described in section II.A.2 of the Preamble and Chapter 3 of the RIA, EPA's conclusion is that the standards adopted today, considering the lead time provided and other flexibility provisions such as averaging, banking, and trading, are technologically feasible for this industry and appropriate under section 213 of the Clean Air Act. At the same time, EPA recognizes that certain manufacturers who will be subject to these provisions believe that the standards may not be technologically feasible for them. This issue was most clearly raised with respect to the Class V standards, even though Stihl has certified a Class V engine in California at levels that would meet our final standards. While EPA's adoption of the standards reflects our view that our Class V standards are achievable, EPA also believes that it is appropriate in responding to the manufacturers' comments and concerns to establish a procedure that will allow all members of the regulated industry as well as other interested parties to continue to explore the issue of technological feasibility of the Class V standards as industry makes progress in moving towards implementation of this program. EPA is therefore committing to perform a study of the technological feasibility of the Class V standards we are adopting today, to be completed by the end of 2002. EPA intends the technology study to focus on availability of technology, certification data, in-use performance, and other factors of interest to the parties, such as availability and pricing of credits. EPA expects that this study will involve EPA discussion with individual manufacturers, as well as a public notice and comment process exploring the issues of technological feasibility for Class V.

3. NMHC+NO_X Standard for Class I–B Natural Gas-Fueled Engines

In the July 1999 SNPRM, we proposed standards for Class I–B engines fueled by natural gas. We also requested comment on the need to establish standards for Class I–A engines operated on natural gas. No comments were received on either of these issues. We are finalizing the NMHC+NO_X standard for Class I–B natural gas-fueled engines as proposed. To be consistent with the implementation date for Class I–A and Class I–B noted in section II.A.3., the standard for Class I–B natural gas-fueled engines will take effect with the 2001 model year.

4. Useful Life Categories

With today's action, we are adopting the three different useful life categories for handheld engines as proposed. Therefore, a manufacturer will choose between useful life categories of 50, 125, and 300 hours. A manufacturer would be responsible for demonstrating compliance with the Phase 2 handheld engine standards described in today's action at whichever useful life level it designated for its engine families. We believe that 50 hours is appropriate for most of the products targeted at the home consumer and 300 hours is appropriate for products targeted at the commercial market. Some engines targeted for home consumer use (including some new engines which are expected to enter the market in the next few years) are expected to have designs which tend to be more durable than the 50 hour consumer grade designs yet are not as durable as the 300 hour commercial grade designs. Such engines can be certified to the intermediate useful life category of 125 hours.

For the newly designated category of Class I–A engines, we are adopting the handheld engine useful life categories of 50, 125, and 300 hours, as proposed. We believe the engine designs in Class I–A will be similar to handheld engines in terms of design durability. In addition, the useful life designations for Class I–A engines are the same as those established by the California ARB in its Tier 2 rule for engines of this size range. For the newly designated category of Class I–B engines, we are adopting useful life categories of 125, 250 or 500 hours, as proposed. These useful life categories are the same as we finalized for Class I nonhandheld engines in March 1999 because we believe the engines designs in Class I–B will be similar to Class I nonhandheld engines in terms of design durability. In addition, the useful life designations for Class I–B engines are the same as those established by the California ARB in its Tier 2 rule for engines of this size range.

5. Selection of Useful Life Category

As proposed in the July 1999 SNPRM, today's action assigns the responsibility for selecting the useful life category to the engine manufacturer. For manufacturers of handheld engines, virtually all engines are placed in specific equipment also manufactured by the engine manufacturer or, in those cases where engines are supplied to another equipment manufacturer, into equipment well known by the engine manufacturer. Handheld engine manufacturers know the design features and performance characteristics of both their engines and the equipment in which they are installed, and understand the expected in-use operation of this equipment and thus the expected useful life of the engine. Additionally, based on design features these manufacturers build into their engines, they have a good idea of the expected useful life in such applications. Similarly, we expect that manufacturers of Class I–A and Class I–B engines will have a good idea of the types of equipment their engines are expected to be used in and, from their marketing information, a reasonably accurate projection of the relative volumes in such applications. Given that many of these engines will be used in new applications, manufacturers should have an even clearer understanding of these projections. Relying on this information, manufacturers should be able to make good selections of appropriate useful life categories for their engines.

While today's action leaves the responsibility of selecting the useful life category to the manufacturer, we expect that we would periodically review manufacturers' decisions to ensure this regulation is being properly implemented and to determine whether modifications to the rules are appropriate. We believe it is important that appropriate useful life periods be selected especially because handheld engines, Class I–A engines, and Class I–B engines covered by today's action are included in the ABT program where the useful life period selected by the manufacturer has a direct impact on the number of credits which can be generated or need to be used. Therefore, proper selection of the useful life period is important to ensure that the ABT program is fair and environmentally sound.

6. Certification Test Procedure

With today's action, we are retaining the current test procedure used by manufacturers to certify handheld engines with one change that was proposed in the January 1998 NPRM. For Phase 2, the weighting of the two different test modes used for calculating certification emission levels for handheld engines is being changed to 85 percent for the wide open throttle mode and 15 percent for the idle mode. The revised weightings are based on information submitted by manufacturers on actual handheld equipment being operated in real world conditions. (The weighting of the modes for Phase 1 handheld engines is 90 percent for the wide open throttle mode and 10 percent for the idle mode, and will remain so for the duration of the Phase 1 program.)

B. What Are the Provisions of the Averaging, Banking, and Trading Program?

With today's action, we are adopting provisions to include all Phase 2 handheld engines and the newly designated nonhandheld engine classes (Class I–A and Class I–B) in the certification averaging, banking, and trading (ABT) program adopted in the March 1999 final rule for Phase 2 nonhandheld engines. Averaging means the exchange of emission credits among engine families within a given engine manufacturer's product line. Averaging allows a manufacturer to certify one or more engine families to Family Emissions Limits (FELs) above the applicable emission standard. However, the increased emissions have to be offset by one or more engine families certified to FELs below the same emission standard, such that the average emissions in a given model year from all of the manufacturer's families (weighted by various parameters including engine power, useful life, and number of engines produced) are at or below the level of the emission standard. Banking means the retention of emission credits by the engine manufacturer generating the credits for use in future model year averaging or trading. Trading means the exchange of emission credits between engine manufacturers which then can be used for averaging purposes, banked for future use, or traded to another engine manufacturer.

The following section describes the ABT program as it will apply to handheld engines, Class I–A engines, and Class I–B engines. The basic framework of the ABT program is the same as that finalized for nonhandheld engines in March 1999. To address comments submitted on the July 1999 SNPRM relating to the stringency of the standards and the phase-in periods, we have made a number of changes to the ABT program proposed in the July 1999 SNPRM and such changes are noted in the following section. In addition, the Summary and Analysis of Comments Document contains a complete description of comments received on the proposed ABT program and our response to those comments.

Because the Phase 1 rule did not include an ABT program, this will be the first ABT program for handheld engines. We believe the ABT program is an important element in ensuring that the stringent Phase 2 emissions standards being adopted today will be achievable with regard to technological feasibility, lead time, and cost. The ABT program is intended to enhance the flexibility offered to engine

manufacturers that will be needed in transitioning their product lines to meet the stringent $HC+NO_X$ standards being adopted with today's action. The ABT program also encourages the early introduction of clean engines certified under the Phase 2 requirements, thus securing earlier emission benefits.

We believe that the ABT program being adopted for handheld engines, Class I–A engines, and Class I–B engines is consistent with the statutory requirements of section 213 of the Clean Air Act. Although the language of section 213 is silent on the issue of averaging, it allows us considerable discretion in determining what regulations are most appropriate for nonroad engines. The statute does not specify that a specific standard or technology must be implemented, and it requires us to consider costs, lead time, safety, and other factors in making our determination of the greatest degree of emissions reduction achievable through the application of technology which will be available. Section 213(a)(3) also indicates that our regulations may apply to nonroad engine classes in the aggregate, and need not apply to each nonroad engine individually.

As noted above, the ABT program will apply to all classes of handheld engines as well as Class I–A and Class I–B engines. The ABT program will be available for $HC+NO_X$ emissions but will not be available for CO emissions. The ABT program will also apply to natural gas-fueled engines. All credits for natural gas-fueled engines will be determined against the standards to which the engine is certified (either the $HC+NO_X$ standard or the optional $NMHC+NO_X$ standards noted earlier). Under the program being adopted today, manufacturers are allowed to freely exchange $NMHC+NO_X$ credits with $HC+NO_X$ credits.

Today's action places no restrictions on credit exchanges across any of the classes of small SI engines. Under the ABT program, manufacturers will be allowed to exchange credits from handheld engines to nonhandheld engines and visa versa. Given the stringent level of the standards recently finalized for nonhandheld engines and the stringent level of the standards contained in today's final rule, we do not expect that credits from one class will result in delays in technology improvement for other classes, and do not believe that any cross-class restrictions are necessary.

Under an ABT program, a manufacturer establishes a family emission limit (FEL) for an engine family that takes the place of the emission standard for all compliance determinations. In addition, as part of the ABT program, we establish upper limits on the FEL values that may be declared by manufacturers. The FEL upper limits contained in the July 1999 SNPRM for handheld engines were 300 g/kW-hr for Class III engines, 246 g/kW-hr for Class IV engines, and 166 g/kW-hr for Class V engines and were based on the combination of the Phase 1 HC standard and NO_X standard. One engine manufacturer submitted comments on the proposed FEL upper limits and suggested that they should be raised by 12 percent to account for differences between the Phase 1 and Phase 2 programs. The differences specifically cited by the manufacturer that could cause current Phase 1 engines to exceed the proposed FEL upper limits included the change in the weighting of the two test modes (when calculating certification emission levels) and the need to factor in deterioration over the useful life of the engine. While most current engines are certified well below the Phase 1 emission standards, we agree that certain engines, especially those certified closer to the Phase 1 standards, could exceed the proposed FEL upper limits under the Phase 2 program, primarily because the new weighting of the individual test modes in Phase 2 will lead to a higher certification level for such engines, and to a lesser extent because of potential deterioration over the useful life that must be accounted for under the Phase 2 program. Therefore, we are adopting FEL upper limits suggested by the manufacturer that are slightly higher than those proposed in the July 1999 SNPRM to account for the differences between the Phase 1 and Phase 2 programs noted above. The $HC+NO_X$ FEL upper limits being adopted with today's action are 336 g/kW-hr for Class III engines, 275 g/kW-hr for Class IV engines, and 186 g/kW-hr for Class V engines. For the newly designated categories of Class I–A and Class I–B engines, we did not receive any comments on the proposed FEL upper limits. Therefore, we are adopting $HC+NO_X$ FEL upper limits of 94 g/kW-hr and 50 g/kW-hr, respectively, as proposed.

Under the ABT program, all credits will be calculated based on the difference between the manufacturer-established FEL and the Phase 2 $HC+NO_X$ standard for the applicable model year using the following equation.

$$\text{Credits} = (\text{Standard} - \text{FEL}) \times \text{Production} \times \text{Power} \times \text{Useful life} \times \text{Load Factor}$$

At the time of certification, manufacturers will be required to supply to us the appropriate information used in the above noted equation. ''Production'' represents the manufacturer's U.S. production of engines for the given engine family, excluding exported engines and engines that are introduced into commerce for use in California. ''Power'' represents the maximum modal power of the certification test engine over the certification test cycle. ''Useful Life'' is the regulatory useful life established by the manufacturer for the given engine family. ''Load Factor'' is a constant that is dependent on the test cycle over which the engine is certified.

In order to demonstrate compliance with the applicable $HC+NO_X$ emission standard in a given model year, a manufacturer participating in the ABT program will be required to show that the number of $HC+NO_X$ credits available to the manufacturer are equal to or greater than the number of credits needed by engines certified with FELs above the applicable standards in that model year. This will be done by using credits generated in that model year by engines certified with FELs below the applicable standard, banked credits, or credits obtained in a trade from another small SI engine manufacturer.

With regard to credit life, the final rule differs from the proposed provisions of the ABT program in order to address comments received on the SNPRM relating to the stringency of the standards and the phase in periods. Under the ABT provisions being adopted today for handheld engines, manufacturers will be able to select from two options for the purpose of generating credits. These two programs also have unique credit life opportunities. Under the program referred to as the ''Normal Credit'' program, manufactures certifying engine families with FELs at or below 72 g/kW-hr will have an unlimited credit life. Such credits will be available to the manufacturer for the duration of the Phase 2 program and will not be discounted in any manner under the Normal Credit program. Credits generated by engines certified with FELs above 72 g/kW-hr can be used by a manufacturer in the model year in which they are generated for its own averaging purposes, or traded to another manufacturer to be used for averaging purposes in that model year. However, such credits generated by engines may not be carried over to the next model year, including when traded to another manufacturer.

Alternatively a manufacturer may choose to have a family participate in what is referred to as the ''Optional Transition Year'' credit program. Under

this program, any family with FELs below the applicable phase-in standards is eligible to generate credits. However, these credits will be progressively discounted the higher the family's FEL is compared to the final standards for that class. For example, in Class IV, a family with an FEL 99 g/kW-hr or higher in 2002 will have its credits discounted by 75 percent before they can be used in future model years. If the family's FEL was equal to 87 g/kW-hr but less than 99 g/kW-hr, its credits will be determined by the difference between its FEL and the Class IV standard for model year 2002 (196 g/kW-hr) and then discounted by 50 percent before being used in future model years. This combination of ability to generate credits with families of higher emission levels but discounting the credits for these higher emitting engines provides an increased incentive for manufacturers to make interim emission improvements while still preserving the environmental benefits of this program. We are also providing an additional incentive for manufacturers who produce especially clean equipment by providing a 25% bonus for credits generated below specified levels.

While normal program credits do not have an expiration date, special program credits have a limited life and application. They may be used without limitation through the 2007 model year. For model years 2008 through 2010, they may also be used, but only if the manufacturer's product line is, without the use of any credits, below a level determined by production weighting the manufacturer's product line assuming emission levels of 72 g/kW-hr for Class III, 72 g/kW-hr for Class IV and 87 g/kW-hr for Class V.

These programs also respond to manufacturer concerns that the rule should provide that the technologies in which they considerably invested to meet California standards could also be sold nationally, at least through the phase-in years without penalty. Also, allowing carryover credits to be generated from such engines provides an additional incentive for manufacturers to market nationally the clean technologies they have developed for California.

Under the ABT program, manufacturers of handheld engines will be allowed to use portions of the ABT program prior to implementation of the Phase 2 standards to provide an incentive to accelerate introduction of cleaner technologies into the marketplace. We believe that making bankable credits available prior to the effective date of the new standards will reward those manufacturers who take on the responsibility of complying with the Phase 2 requirements sooner than required and will also result in early environmental benefits.

Under the early banking provisions for handheld engines, manufacturers will be allowed to begin using the averaging and banking portions of the ABT program beginning with the 2000 model year. However, only those engines certified to the Phase 2 requirements and produced after the effective date of this action will be eligible for early credits in the 2000 model year. As proposed, all early credits will be calculated against the first year phase in standards for the applicable engine class (i.e., 238 g/kW-hr for Class III engines, 196 g/kW-hr for Class IV engines, and 143 g/kW-hr for Class V engines) until the first year that the Phase 2 standards apply for the appropriate engine class. This approach for early credits from handheld engines is similar to the approach recently finalized for nonhandheld engines where early credits are generated only from engines with FELs below the final standards, not the initial phase in standards. After considering comments submitted on the SNPRM, we now believe a similar approach is appropriate for handheld engines in order to provide us with sufficient assurance that the ABT program will not contribute to a significant delay in implementation of the low-emitting technologies envisioned under the Phase 2 program.

Because the Phase 2 standards for Class I–A and Class I–B engines that are being adopted today are scheduled to take effect so soon (beginning with the 2001 model year) and because manufacturers indicated they would not be ready to implement these standards sooner, no opportunity exists for generating credits. Therefore, we are not adopting early credit provisions for Class I–A and Class I–B engines.

Engines for which a manufacturer generates early credits will have to comply with all of the requirements for Phase 2 engines (*e.g.*, full useful life certification, the Production Line Testing program requirements, etc.). Manufacturers of handheld engines will not be allowed to trade their early engine credits to other manufacturers until the first effective model year of the Phase 2 standards for the applicable engine class.

As discussed in section II.D. of today's action, we are adopting several compliance flexibility provisions for engine manufacturers and equipment manufacturers that allow the limited use of Phase 1 engines in the Phase 2 time frame. Phase 1 engines sold by engine manufacturers under the flexibility provisions will be excluded from the ABT program. In other words, engine manufacturers will not have to use credits to certify Phase 1 engines used for the flexibility provisions even though they will likely exceed the Phase 2 standards being adopted today.

As noted elsewhere in today's final rule, we are adopting a number of provisions that address post-certification compliance aspects of the new standards. Under certain conditions, we will allow manufacturers to use credits from the certification ABT program to address excess emissions situations determined after the time of certification. As noted in the discussion on compliance, we do not believe that the typical type of enforcement action that could be taken when a substantial nonconformity is identified (*i.e.*, an engine family recall order) will generally be workable for small SI engines given the nature of the market. Instead, for the purposes of implementing the PLT program, we are adopting provisions to allow manufacturers to use engine certification ABT credits to offset limited emission performance shortfalls for past production of engines determined through the PLT program. The conditions under which we will allow manufacturers to use certification ABT credits to offset such emission performance shortfalls are described in section II.C. of today's action.

Under today's action, we will not allow manufacturers to automatically use ABT credits to remedy a past production nonconformance situation identified through the Selective Enforcement Audit (SEA) program. As described in today's action, we expect to primarily rely on the PLT program to monitor the emissions performance of production engines. However, it is possible that we may conduct SEAs in certain cases. Therefore, as discussed in section II.C., if we determine that an engine family is not complying with the standards as the result of an SEA, we will work with the manufacturer on a case-by-case basis to determine an appropriate method for dealing with such a nonconformity. The option(s) we select, after consultation with the engine manufacturer may, or may not, include the use of ABT credits to make up for any ''lost'' emission benefits uncovered by the SEA. This program is consistent with the program adopted for nonhandheld engines under Phase 2.

C. What Are the Provisions of the Compliance Program?

The compliance program being adopted today is comprised of three parts: a pre-production certification program during which manufacturers evaluate the expected emission performance of their engine designs including the durability of that emission performance; a production line test program during which manufacturers perform emission tests on randomly selected products coming off the assembly line to assure their designs as certified continue to have acceptable emission performance when put into mass production; and a voluntary in-use test program during which participating manufacturers evaluate the in-use emission performance of their product under typical operating conditions. In addition to the manufacturer-directed provisions of the compliance program, we will also have the option to conduct our SEA program and our own in-use testing program for small SI engines, either generally or on a case-by-case basis.

Under the compliance programs, a manufacturer will divide its product offering based upon specific design criteria which have the potential for significantly different emission performance; these subdivisions are called engine families. Each engine family will be required to meet the standard applicable for the class in which that engine resides unless the manufacturer chooses to participate in the ABT program also being proposed today. (See section II.B. of today's action for discussion of the ABT program.) The other provisions of the compliance program are explained in more detail below. In all cases, to the best of our knowledge, the requirements of the federal compliance program will be sufficiently similar to the requirements of the California ARB program for these engines such that for engine families sold in both the State of California and nationally, the engines selected for testing, the test procedures under which they are tested, and the data and other information required to be supplied by regulations, can be the same under both programs. Thus, we expect that a manufacturer will be able to compile one application for certification satisfying the information needs of both programs, saving the manufacturer time and expense. Similarly, the EPA and the California ARB expect to share information from their compliance programs such that any production line testing or in-use testing conducted for one agency should satisfy the similar needs of the other agency, again minimizing the burden on the manufacturers.

1. Certification

This section addresses the certification program for engine manufacturers covered by today's action. As required in the Act, the certification process is an annual process. In addition, the Act prohibits the sale, importation, or introduction into commerce of regulated engines that are not covered by a certificate. The provisions of the certification program being adopted today are the same as contained in the July 1999 SNPRM. The only comments received on the July 1999 SNPRM supported the certification program as proposed. With today's action, we are adopting a certification program that harmonizes the handheld Phase 2 program with the requirements of the California ARB's Regulations for 1995 and Later Small Off-Road Engines, amended January 29, 1999. In addition, the general certification requirements for manufacturers of handheld engines will be the same as those finalized for nonhandheld engines in March 1999.

Under today's action, manufacturers of handheld engines will be required to demonstrate that their regulated engines comply with the appropriate emission standards throughout the useful life of the engine family. To account for emission deterioration over time, manufacturers will need to establish deterioration factors for each regulated pollutant for each engine family. Manufacturers will be able to establish deterioration factors by using bench aging procedures which appropriately predict the in-use emission deterioration expected over the useful life of an engine or an in-use evaluation which directly accounts for this deterioration. As is the case with many of our mobile source regulations, the multiplicative deterioration factors cannot be less than one. Additionally, where appropriate and with suitable justification, deterioration factors can be carried over from one model year to another and from one engine family to another.

Today's action also provides flexibility for small volume engine manufacturers and small volume engine families. Under the flexibilities being adopted today, handheld engine manufacturers will be allowed the option of using assigned deterioration factors we have established in the regulations. The deterioration factors, either assigned or generated, will be used to determine whether an engine family complies with the applicable emission standards in the certification program, the PLT program, and the SEA program.

As with the Phase 1 program, manufacturers will be allowed to submit Phase 2 certification applications to us electronically, either on a computer disk or through electronic mail, making the certification application process efficient for both manufacturers and for us. Also, in coordination with the California ARB, we have established a common application format that will allow manufacturers to more easily apply for certification.

In today's final rule, we are also adopting a method by which manufacturers can separately certify configurations for use at high altitude. The provisions being adopted today are the same as we proposed in the July 1999 SNPRM. Manufacturers are currently required by the Phase 1 rule to certify engines for use at any altitude, but the rule does not specifically address separate high altitude and low altitude configuration testing. The need for the high altitude modifications has been a topic of recent discussions between us and manufacturers. To allow an engine to perform properly and meet emission standards while being operated at high altitudes, many manufacturers have developed special high altitude adjustments or high altitude kits which include replacement of some parts such as carburetor jets. However, if an engine with such a kit installed is operated outside of a high altitude location, the kit would have to be removed and the engine returned to its original configuration for the engine to continue to perform properly and meet emission standards.

Today's action will allow manufacturers of both handheld and nonhandheld engines to certify an engine for separate standard and high altitude configurations. All engines will be required to meet, under all altitude conditions, the applicable emission standards. The option will be available for both Phase 1 and Phase 2 handheld and nonhandheld engines. Without such a certification option, we could potentially consider the installation of an altitude kit and other associated modifications as tampering. No test data on engines with high altitude modifications performed will be required as a condition of certification, as this would add significantly to the manufacturer's certification compliance testing cost. Furthermore, no testing seems necessary since the altitude kits and associated modifications are intended to compensate for the change in air density when moving to high altitude by returning the engine to approximately the same operating point

as evaluated during required certification testing. Similarly, no special labeling will be required for engines which have such altitude kits certified or for those in-use engines which have had altitude modifications performed. Consumers have a natural incentive to have the high altitude kit installed and adjustments performed when using an engine at high altitude as this greatly improves performance; for the same reason we expect the modifications would be removed when returning the engine to low altitude. However, we believe some additional assurance is needed that the high altitude modifications are designed to provide good emission control and that the instructions for making these modifications are clear and readily available and thus likely to be performed correctly.

To provide this assurance, today's action requires a manufacturer to list these altitude kits with their appropriate part numbers along with all the other certified parts in the certification application. In the application, the manufacturer will have to declare the altitude ranges at which the appropriate kits should be installed on or removed from an engine for proper emission and engine performance. The manufacturer will also be required to include a statement in the owner's manual for the engine or engine/equipment combination (and other maintenance-related literature intended for the consumer) that also declares the altitude ranges at which the appropriate kits must be installed or removed. Finally, the manufacturer, using appropriate engineering judgement which, at the manufacturer's option, can also include test data, will be required to determine that an engine with the altitude kit installed will meet all of the applicable emission standards throughout its useful life. The rationale for this assessment will need to be documented and provided to us as part of the certification application.

2. Production Line Testing—Cumulative Summation Procedure

This section addresses the production line testing (PLT) program for engines covered by today's action. The provisions of the PLT program being adopted today are the same as we proposed in the July 1999 SNPRM and mirror the provisions of the PLT program adopted in March 1999 for nonhandheld engines. In addition, the provisions of the PLT program are the same as the corresponding program implemented by the California ARB, allowing manufacturers to use the same procedures for testing production engines for both agencies. The PLT program will require manufacturers to conduct manufacturer-run testing programs using the Cumulative Summation Procedure (CumSum).[4] The CumSum program, will require manufacturers to conduct testing on each of their engine families (unless they have been relieved of this requirement under the flexibility provisions described in section II.D.). The maximum sample size that will be required for each engine family is 30 engines or 1 percent of a family's projected production, whichever is smaller. However, the actual number of tests ultimately required will be determined by the results of the testing. Manufacturers will be able to submit PLT reports to us electronically, either on a computer disk or through electronic mail, which will save time and money for both the engine manufacturers and for us.

As mentioned in the discussion of the certification ABT program, above, manufacturers can, for a limited amount of production, use ABT credits to offset the estimated excess emissions of previously produced noncomplying engine designs as determined in the PLT program. (The amount of excess emissions will be determined based on the difference between the new FEL established by the manufacturer as a result of the PLT program and the original FEL established prior to the PLT program.) Under today's action, a manufacturer will be allowed to raise the FEL for one engine family per model year. If a PLT program failure requires a manufacturer to raise the FEL for more than one engine family per model year, the manufacturer can do so only if the applicable engine family represents no more than ten percent of the manufacturer's production for that model year. For any additional engine families that are found to be in noncompliance as a result of the PLT program, the engine manufacturer will need to conduct projects approved by us that are designed to offset the excess emissions from those engines.

Several engine manufacturers commented that we should eliminate any restrictions on the use of ABT credits to offset PLT noncompliance. However, as noted above, we are retaining the limitations. We believe a major purpose of the PLT program is to help verify that the engine designs certified by manufacturers have been successfully implemented in the manufacturing process. Therefore, we expect few instances in which manufacturers will need to correct a PLT failure through raising the FEL since that would imply the manufacturer incorrectly set the initial FEL for that family. Frequent use of this remedy would suggest the manufacturer was incapable of correctly setting the FELs for its product, in which case we would have to reconsider allowing a manufacturer to participate in the ABT program at its option.

With regard to future production of engines identified to be in noncompliance as a result of PLT testing, the manufacturer will be expected to correct the problem causing the emission noncompliance either by changing the production process, changing the design (which will require recertification), or raising the FEL to compensate for the higher emissions (also requiring recertification). In the event a manufacturer raises an FEL as a result of a PLT failure, it can do so for future production as well as past production under the provisions described above which will require a calculation of the number of credits a manufacturer would need to obtain for the past production engines. It can also be noted that compliance with the applicable standard (or the applicable FEL) will be required of every covered engine. Thus, every engine that failed a PLT test will be considered in noncompliance with the standards and must be brought into compliance. Our rules allowing the use of the average of tests to determine compliance with the PLT program is intended only as a tool to decide when it is appropriate to suspend or revoke the certificate of conformity for that engine family, and is not meant to imply that not all engines have to comply with the standards or applicable FEL.

As discussed further in section II.D, we are adopting provisions that allow small volume manufacturers and small volume engine families to be excluded from the PLT program at the manufacturer's option.

3. Voluntary In-Use Testing

This section addresses the voluntary in-use testing program being adopted today. The voluntary in-use testing program for engines covered by today's action is the same as we proposed in the July 1999 SNPRM. The comments we received on the July 1999 SNPRM supported the proposed program. The program being adopted today for

[4] The CumSum procedure has been promulgated for marine SI engines at 40 CFR Part 91 (61 FR 52088, October 4, 1996) and for nonhandheld small SI engines at 40 CFR Part 90 (64 FR 15208, March 30, 1999). In this section, ''PLT'' refers to the manufacturer-run CumSum procedure. ''PLT'' does not include Selective Enforcement Auditing (SEA), which is addressed separately in section II.C.4. of this preamble.

handheld engines is the same as the voluntary in-use testing program we finalized in March 1999 for nonhandheld engines. The voluntary in-use testing program gives engine manufacturers the option of using a portion of their PLT resources to generate field aged emissions data. At the start of each model year, manufacturers can elect to place up to 20 percent of their engine families in this voluntary program. For those families in this program, manufacturers will not be required to conduct PLT for two model years, the current year and the subsequent year. (As noted earlier, the voluntary in-use test program has not been codified in the California ARB Tier 2 rules for small SI engines. However, we have discussed the program with the California ARB and it supports the voluntary in-use testing provisions contained in today's action.) Instead, manufacturers will place a minimum of three randomly selected production engines in existing consumer-owned, independently-owned, or manufacturer-owned fleets. Manufacturers will install the engines in equipment that represents at least 50 percent of the production for an engine family and age the engine/equipment combination in actual field conditions to at least 75 percent of each engine's regulatory useful life. Once an engine in this program has been sufficiently field aged, the manufacturer will conduct an emissions test on that engine. The results of these tests will then be shared with us. If any information derived from this program indicates a potential substantial in-use emission performance problem, we anticipate that the manufacturer will seek to determine the nature of the emission performance problem and what corrective actions might be appropriate. We plan to offer our assistance in analysis of the reasons for unexpectedly high in-use emission performance as well, and of what actions may be necessary or appropriate for reducing such high emissions. Manufacturers will have three calendar years from the date they notify us of their intent to include a family in the voluntary in-use testing program to complete the actual in-use testing.

While the compliance program being adopted today will not require a manufacturer to conduct any in-use testing to verify the continued satisfactory emission performance in the hands of typical consumers, we believe it is worthwhile to have an optional program for such in-use testing. We believe it is important for manufacturers to conduct in-use testing to assure the success of their designs and to factor back into their design and/or production process any information suggesting emission problems in the field. In order to encourage participation in this voluntary in-use testing program, we would not expect to use the data from this program as the primary basis for a noncompliance determination. However, neither could we entirely disregard it, and we could always choose to conduct our own in-use compliance program that could form the primary basis for a noncompliance determination. We would expect to conduct such a test program separate from this voluntary manufacturer testing program, to further enable us to determine whether a specific group of engines is complying with applicable in-use standards.

Although we are not finalizing a mandatory in-use testing program as proposed in the January 1998 NPRM, we did finalize the in-use noncompliance provisions for Phase 2 engines as part of the March 1999 final rule for nonhandheld engines (see 64 FR 15208: Subpart I, section 90.808). These provisions will now apply to Phase 2 handheld engines as well. Under these provisions, if we determine that a substantial number of engines within an engine family, although properly used and maintained, do not conform to the appropriate emission standards, the manufacturer will be required to remedy the problem and conduct a recall of the noncomplying engine family as required by CAA section 207. However, we also recognize the practical difficulty in implementing an effective recall program as it would likely be impossible to properly identify all of the owners of equipment using small engines (there is no national requirement to register the ownership of such equipment), and it is also highly questionable whether all owners or operators of such equipment would respond to an emission-related recall notice. Therefore, under the final program, our intent is to generally allow manufacturers to nominate alternative remedial measures to address most potential non-compliance situations, as the January 1998 NPRM discussed (see 63 FR 3992). We expect that, if successfully implemented, the use of appropriate alternatives should obviate the need for us to make findings of substantial nonconformity under section 207. In evaluating manufacturer-nominated alternatives, we would consider those alternatives which (1) represent a new initiative that the manufacturer was not otherwise planning to perform at that time and that has a nexus to the emission problem demonstrated by the subject engine family; (2) cost substantially more than foregone compliance costs and consider the time value of the foregone compliance costs and the foregone environmental benefit of the subject family; (3) offset at least 100 percent of the exceedance of the standard or FEL; and (4) are able to be implemented effectively and expeditiously and completed in a reasonable time. These criteria would guide us in evaluating projects to determine whether their nature and burden is appropriate to remedy the environmental impact of the nonconformity while providing assurance to the manufacturer that we would not require excessive projects.

In addition to being evaluated according to the above criteria, alternatives would be subject to a cost cap. We would expect to generally apply a cost cap of 75 percent above and beyond the foregone costs adjusted to present value, provided the manufacturer can appropriately itemize and justify these costs. We believe that this is an appropriate value that, in most cases, should be both ''substantial'' and sufficient to encourage manufacturers to produce emission durable engines.

4. Selective Enforcement Auditing

This section addresses the SEA program being adopted today. The provisions of the SEA program being adopted are the same as those adopted in March 1999 for Phase 2 nonhandheld engines. As noted in the both the January 1998 NPRM and July 1999 SNPRM, we do not view the SEA program as the preferred production line testing program for small engines. The CumSum procedures, described above, are being adopted as the production line program that manufacturers will conduct. The SEA program included in today's action is intended as a ''backstop'' to the CumSum program and will be used in cases where we believe there is evidence of improper testing or of a nonconformity that is not being addressed by the CumSum program. The SEA program will also be primarily applicable to engine families optionally certified under the small volume manufacturer provisions and the small volume engine family provisions, where manufacturers may elect not to conduct PLT testing for such families. However, as for other families, we do not expect families certified under the small volume provisions will be routinely tested through an SEA program.

Two handheld industry groups commented that we should eliminate the proposed restrictions on the

retroactive use of ABT credits for SEA failures. We believe the main purpose of an SEA program is to determine whether the engine designs certified by manufacturers have been successfully implemented by manufacturers in the manufacturing process. Therefore, in contrast to the PLT program being adopted today, we do not believe manufacturers who fail an SEA should have the automatic option of using ABT credits to remedy noncomplying engines already introduced into commerce. The PLT program is designed to allow a manufacturer to continually evaluate its entire production and quickly respond to the results throughout the model year. We believe that allowing a manufacturer to use credits, for a limited amount of engines, to remedy past production emission failures is consistent with the continual evaluation provided by the PLT program. The SEA program, in contrast, is designed to be a one time, unannounced inspection of a manufacturer's production line with definitive passing or failing results. We believe that in this type of a compliance program, where at most only a few engine families might be tested each year, manufacturers must place more emphasis on the transition from certification to the production line and must set initial FELs accurately. Therefore, to encourage accurate FEL settings at the time of certification, the SEA program adopted today will not allow manufacturers to automatically remedy SEA failures by retroactively adjusting FELs. We continue to believe the remedies for an SEA failure will be best determined on a case-by-case basis which may or may not include the use of ABT credits, in our judgement, depending upon our assessment of the specific case.

D. What Flexibilities Are Being Adopted for Engine and Equipment Manufacturers?

The following section describes the flexibilities available to engine and equipment manufacturers under the Phase 2 program being adopted today. The flexibilities are being adopted to ease the transition from the Phase 1 to the Phase 2 program, to ensure that the Phase 2 standards are cost-effective and achievable, and to reduce the compliance burden while maintaining the environmental benefits of the rule. Several comments were received on the flexibilities proposed in the July 1999 SNPRM, some supporting the proposed flexibilities and others offering recommended changes. Areas where changes have been made in response to comments on the July 1999 SNPRM are noted in the following discussion. The Summary and Analysis of Comments Document contains a complete summary and analysis of the comments submitted on the flexibilities proposed in the July 1999 SNPRM.

1. Carry-Over Certification

Consistent with other mobile source emission certification programs, we will continue to allow a manufacturer to use test data and other relevant information from a previous model year to satisfy the same requirements for the existing model year certification program as long as the data and other information are still valid. Such ''carry-over'' of data and information is common in mobile source programs where the engine family being certified in the current model year is identical to the engine family previously certified.

2. Flexibilities for Small Volume Engine Manufacturers and Small Volume Engine Families

In the July 1999 SNPRM, we reproposed a number of compliance flexibilities for small volume engine manufacturers and small volume engine families. The comments we received from handheld engine manufacturers and industry groups supported the flexibilities for handheld engines, while the California ARB questioned the need for such extensive flexibilities. We continue to believe the flexibilities are appropriate to ease the transition from Phase 1 to Phase 2 for those engine families and engine manufacturers where relief is most needed. In addition, we have considered the air quality impact of these flexibilities and estimate that less than two percent of the total small engine production will likely take advantage of this option to delay compliance with the Phase 2 standards, with only a negligible impact on the emission benefits expected from the program. Therefore, with today's action, we are adopting the flexibilities as proposed in the July 1999 SNPRM with one revision to accommodate the final four year phase-in schedule being adopted today.

The three flexibilities that will be available to both small volume handheld engine families and small volume handheld engine manufacturers are as follows. (The criteria for determining whether a specific engine family is a small volume engine family or whether an engine manufacturer is a small volume engine manufacturer is described below in sections II.D.3. and II.D.4.) First, the eligible family or manufacturer can certify to Phase 1 standards and regulations until the third year after the end of the Phase 2 implementation schedule. Because we are adopting a four year implementation schedule instead of a five year schedule as proposed in the July 1999 SNPRM, small volume engine families or small volume engine manufacturers will have until the 2008 model year for Classes III and IV and the 2010 model year for Class V engines to comply with the Phase 2 standards. Such engines will be excluded from the ABT program until they are certified to the Phase 2 standards. Second, once subject to the Phase 2 standards, the eligible family or manufacturer can certify using assigned deterioration factors. Third, the eligible family or manufacturer can elect to not participate in the Phase 2 PLT program, however, the SEA program will still be applicable.

Given the stringency of the newly adopted standards for handheld engines, we expect the major engine manufacturers will choose to modify their small volume engine families last as these often represent niche markets. Additionally, these niche applications may represent some of the more difficult engine applications due to their unique requirements. The experience gained in designing, producing and getting in-use feedback on engine family designs with large production volumes should be helpful in minimizing the cost and assuring the performance of the small volume engines. Similarly, the design challenges for the small volume engine manufacturer due to the stringent Phase 2 standards are expected to be significant and, given the limited resources of such manufacturers, suggest that more time to accomplish the transition to Phase 2 standards is warranted. We expect manufacturers will take advantage of the extra time to smooth the transition to Phase 2 standards by bringing the small volume engines into compliance throughout this time period. Due to the fact that circumstances vary greatly from one manufacturer to another, we believe it would be inappropriate to mandate a percent phase-in schedule or some other mandatory rate of phase-in for these small volume engine families and small volume engine manufacturers. Therefore, we are adopting only a final compliance requirement that is effective three years after the end of the Phase 2 phase-in schedule. We believe that a three year delay is appropriate based on discussions with manufacturers and given the number of engine families expected to be eligible for the proposed flexibilities, even with the final implementation schedule.

We did receive specific comments on one facet of one of the flexibilities for small volume engine manufacturers and

small volume engine families. Two manufacturers suggested that the assigned deterioration factors we proposed in the July 1999 SNPRM should only apply for known or existing commercialized technologies. They noted that deterioration factors for new technologies cannot be assigned at this time. We agree with the comment that new technologies which have yet to be developed should not automatically be allowed to use the assigned deterioration factors specified as part of the flexibility regulations. However, based on data from currently available technologies, such as current 4-stroke engines, standard 2-stroke designs (i.e., 2-stroke designs certified under the Phase 1 program), the compression wave technology, and the stratified scavenging with lean combustion design, we believe the assigned deterioration factors as proposed are appropriate. Therefore, we are revising the regulations to note that the assigned deterioration factors may be used by 4-stroke engines, standard 2-stroke designs, the compression wave technology, and the stratified scavenging with lean combustion design. A manufacturer that would like to use assigned deterioration factors for any other technology would need to make a request to us. We would then, with the assistance of the requesting manufacturer, determine whether the existing assigned deterioration factors were appropriate or alternative factors better represented the expected deterioration of the technology.

No comments were received on the flexibility proposed in the July 1999 SNPRM for Class I–A and Class I–B engines. Therefore, as proposed in the July 1999 SNPRM, for Class I–A and Class I–B, we are adopting only one flexibility for small volume engine families and small volume engine manufacturers. Under today's action, eligible Class I–A and Class I–B small volume engine families or manufacturers can elect to not participate in the PLT program, however, the SEA program will still be applicable.

3. Small Volume Engine Manufacturer Definition

In order to qualify as a small volume engine manufacturer and be eligible for the flexibilities described earlier, we proposed in the July 1999 SNPRM that a handheld engine manufacturer would need to produce no more than 25,000 handheld engines annually. In addition, for manufacturers of Class I–A and Class I–B nonhandheld engine families, where we also proposed limited small volume engine manufacturer flexibility, a manufacturer of such engines would need to produce no more than 10,000 nonhandheld engines annually. We received no comments on the proposed cutoff levels for the small volume engine manufacturer definitions. Therefore, we are adopting the definition of small volume engine manufacturers for handheld engines, Class I–A, and Class I–B engines that includes the production cutoffs as proposed in the July 1999 SNPRM.

4. Small Volume Engine Family Definition

In order to qualify as a small volume engine family and be eligible for the flexibilities described earlier, we proposed in the July 1999 SNPRM that a handheld engine family, or a Class I–A or Class I–B engine family, would need to have an annual production level of no more than 5,000 engines. Without such flexibilities, we noted our belief that the cost and other difficulties of modifying small volume engine families to comply with the Phase 2 standards may be difficult enough that the manufacturer might either be unable to complete the modification of the engine design in time or may choose for economic reasons to discontinue production of the small volume engine family. The impact of such a scenario would of course fall on the engine manufacturer through reduced engine sales, but would also fall perhaps even more significantly on small volume equipment applications, the most typical use for these small volume engine families. Due to the unique character of these small volume equipment applications, it is quite possible that some equipment manufacturers might not be able to find a suitable replacement engine. In such a case, that equipment manufacturer would also be significantly impacted through lost sales, and consumers would be harmed through the loss in availability of the equipment.

We received one comment from an engine manufacturer suggesting that we raise the cutoff for small volume engine family to 10,000 units, noting that more than 95% of engines would still be covered by the full compliance program. We believe it is important to set the cutoff level for small volume engine family at a level which provides relief to those manufacturers which genuinely need the relief the flexibilities allow. Given the other provisions being adopted today, including the four year implementation schedule and the ABT program, we continue to believe that the 5,000 unit level for determining whether an engine family is a small volume engine family is most appropriate. Therefore, with today's action, we are adopting the definition of small volume engine family as contained in the July 1999 SNPRM that includes the annual production cap to 5,000 units for handheld engine families as well as Class I–A and Class I–B engine families. Based on the cutoff being adopted today, we estimate that 98 percent of handheld engines will still be covered by the full compliance program and subject to the earliest practical implementation of the Phase 2 rule.

5. Flexibilities for Equipment Manufacturers and Small Volume Equipment Models

In the July 1999 SNPRM, we proposed three flexibilities aimed at assuring the continued supply under the Phase 2 regulations of engines for unique, typically small volume equipment applications. All of the comments received on this issue supported the proposed flexibilities. Therefore, with today's action, we are retaining the flexibilities as proposed. The three flexibilities that will be available to equipment manufacturers and small volume equipment models under the Phase 2 program for handheld engines are as follows. First, small volume equipment manufacturers will be allowed to continue using Phase 1 compliant engines through the third year after the last applicable phase-in date of the final Phase 2 standards for that engine class if the equipment manufacturer is unable to find a suitable Phase 2 engine before then. (As noted earlier, because we are adopting a four year phase in schedule instead of a five year phase in, the actual year this flexibility expires is one year earlier than was proposed.) Second, individual small volume equipment models will be allowed to continue using Phase 1 compliant engines throughout the time period the Phase 2 regulation is in effect if no suitable Phase 2 engine is available and the equipment is currently in production at the time we are adopting these Phase 2 rules. If the equipment is ''significantly modified'' in the future then this exemption will end, because we believe design accommodations can and should be made during such a modification to accept an engine meeting Phase 2 standards. Third, a hardship provision will be available that allows any equipment manufacturer, regardless of size, for any of its applications, regardless of size, to continue using a Phase 1 engine for up to one more year beyond the last phase-in of the final standard for that engine class if the requirement to otherwise use a Phase 2 compliant engine will cause substantial financial hardship. This

hardship provision is intended to cover those extreme and unanticipated circumstances which, despite the equipment manufacturer's best efforts, place it in a situation where a lack of Phase 2 complying engines will cause such great harm to the company that the ability of the company to stay in business is at stake. It is not intended to protect an equipment manufacturer against any financial harm or potential loss of market share. It should be noted that the flexibilities for small volume equipment manufacturers and small volume equipment models being adopted today are for equipment manufacturers only and cannot be used by engine manufacturers who also manufacture equipment. (Engine manufacturers are subject to the flexibilities for small volume engine manufacturers and small volume engine families described in section II.D.2. above.) The criteria for determining whether an equipment manufacturer is a small volume equipment manufacturer or whether a specific equipment model is a small volume equipment model is described below (see sections II.D.6. and II.D.7.).

As proposed in the July 1999 SNPRM, no flexibilities are being adopted for Class I–A or Class I–B equipment manufacturers or equipment models with today's action. Because the applications expected to use Class I–A or Class I–B engines will either be new engines and equipment designs or existing applications that use engines already certified under the Phase 1 program (and expected to be able to meet the Phase 2 standards being adopted today), we do not believe there is a need to provide flexibilities for small volume equipment manufacturers and small volume equipment models in the newly designated engine classes which allow delayed introduction of engines certified to the Phase 2 standards. We did not receive any comments on the lack of flexibilities as proposed in the July 1999 SNPRM for Class I–A or Class I–B equipment manufacturers or equipment models.

6. Small Volume Equipment Manufacturer Definition

In the July 1999 SNPRM, we proposed that small volume equipment manufacturers would be defined as those manufacturers whose annual production for sale in the U.S. across all models was 25,000 or fewer pieces of equipment utilizing handheld engines. We received no comments on this issue. Therefore, with today's action, we are adopting the definition of small volume handheld equipment manufacturer as proposed in the July 1999 SNPRM. We estimate that this limit will cover approximately two percent of the annual sales in the handheld category. Providing the flexibilities described in the previous section is expected to allow significant relief to these smallest equipment manufacturers while at the same time assuring the vast majority of equipment uses the lowest emitting engines available.

7. Small Volume Equipment Model Definition

In the July 1999 SNPRM, we proposed that the small volume equipment model definition would cover handheld models of 2,500 or less annual production. We received comments from two handheld industry organizations and two engine manufacturers suggesting that we should raise the cutoff to 5,000 units, the same as the cutoff for the small volume engine family as described earlier. Because many of the small volume equipment models use engines specifically designed for that application, we believe it would be beneficial to set the cutoff for the small volume handheld engine family and small volume handheld equipment model at the same level. Therefore, with today's action, we are revising the small volume equipment model definition by increasing the cutoff to 5,000 units or less of annual production. Providing the flexibility for small volume equipment models described earlier in section II.D.5. should allow significant relief to equipment manufacturers while at the same time assuring the vast majority of equipment uses the lowest emitting engines available.

E. Nonregulatory Programs

In the January 1998 NPRM, we discussed a voluntary ''green'' labeling program and a voluntary fuel spillage and evaporative emission reduction program. These programs, which could yield important environmental benefits from the small SI engine sector, are discussed in this section of the preamble.

1. Voluntary ''Green'' Labeling Program

In the January 1998 NPRM, we discussed the concept of a voluntary program for labeling engines with superior emission performance as a way of providing public recognition and also allowing consumers to easily determine which engines have especially clean emission performance. We discussed a threshold of around 50 percent of the proposed standard (e.g., around 12.5 g/kW-hr for Class I engines) as the level below which engines would qualify for ''green'' labeling. We requested comment on all aspects of the program, as well as indication of interest on the part of consumer groups, engine and equipment manufacturers, and others in working with us to develop and implement the program.

We received support for the voluntary ''green'' labeling program concept from several commenters, as well as suggestions for the design of such as program. Other commenters argued that a green labeling program is inconsistent with ABT, and still others supported a mandatory comprehensive labeling program to identify emissions levels above and below standards.

We remain committed to promoting clean technology, and we are interested in developing a green labeling program for small SI engines in a way that does not confuse consumers or undermine environmental goals of the Phase 2 regulations. In the design of a program, it would be necessary to review appropriate levels for a green label, given the stringency of the standards in the final program, as well as to consider the appropriate interface between a green labeling program and the ABT program that is being finalized for handheld engines. We will continue to pursue the development of voluntary green labeling program for small SI engines as a nonregulatory program.

2. Voluntary Fuel Spillage and Evaporative Emission Reduction Program

In the January 1998 NPRM, we discussed our interest in involving stakeholders in the design of a voluntary fuel spillage and evaporative emission reduction program specifically for the small engine industry and its customers. We requested comment on the proposed voluntary partnership program, and indication of interest in participating in the partnership. Comments on this concept included both disappointment that we have not done more in these areas, as well as a willingness on the part of several commenters to work with us. We are aware of the California ARB's recent proposal to control portable fuel container spillage. However, we are not adopting such a program with today's action. At this time, we have not been able to determine the technical feasibility of substantially controlling fuel spillage and evaporative emissions from the small engine equipment sector and therefore we have not been able to determine that a program mandating such controls would be achievable for this industry. Nevertheless, we remain committed to developing voluntary programs to address fuel spillage and evaporative emission reductions.

F. General Provisions of This Final Rule

In the July 1999 SNPRM, we discussed a number of general provisions that would impact Phase 2 engines covered by today's action. These general provisions included engine labeling and emissions warranty and are discussed in the following section. Two additional general provisions noted in the July 1999 SNPRM, the handheld engine definition and use of engines in recreational equipment, referred to a separate February 3, 1999, notice (64 FR 5251) which contained proposed amendments to the existing small SI and marine SI rules. These two additional issues, along with the other proposed amendments contained in the February 1999 proposal, are discussed in section II.G. of today's action.

1. Engine Labeling

In the July 1999 SNPRM, we proposed that manufacturers would be required to state the useful life hours on the engine label. We also proposed an alternative labeling option under which engine manufacturers could use a designator of useful life hours (e.g., A, B, or C) and then include words on the label which would direct the consumer to the owner's manual for an explanation of the meaning of the useful life designator. Finally, the July 1999 SNPRM proposed to allow other labeling options provided the Administrator determined that such options satisfied the information intent of the label. This proposed option was intended to allow for the nationwide use of the California labeling system. We also noted that in evaluating the adequacy of an alternative label, we would consider the extent to which the manufacturer's alternative engine label combined with other readily accessible consumer information adequately informed the consumer of the emission performance of the engine. The labeling requirements contained in the July 1999 SNPRM for handheld engines were the same as those adopted in the March 1999 final rule for nonhandheld engines.

We received comments on this issue from four engine manufacturers and one handheld industry organization. One manufacturer noted that they do not believe putting useful life information on the engine label will be meaningful to consumers. However, they supported the proposed alternatives. The other commenters said the we should clearly state our intention to allow the use of the California labeling system nationwide. With today's action we are adopting the labeling provisions as contained in the July 1999 SNPRM. Therefore, a manufacturer can either state the useful life hours on the engine label, or use a designator of useful life hours (e.g., A, B, or C) and then include words on the label which directs the consumer to the owner's manual for an explanation of the meaning of the useful life designator. Finally, a manufacturer could seek our approval to use the California ARB labeling system. Based on the current California ARB labeling system, we plan to approve such requests. (We are not revising the regulations at this point in time because they apply to nonhandheld engines, as well, and we did not propose such a change for nonhandheld engines.) It should be noted that we expect to work in partnership with the industry in developing consumer outreach material to better inform consumers of the emission improvements available through the purchase of equipment using Phase 2 engines. We expect such outreach material will help to better serve the informational needs of consumers instead of having to rely only on any of the labeling options adopted today.

2. Emission Warranty

Under the current regulations, the base emission performance warranty extends for a period of two years of engine use from the date of sale. However, after the original Phase 2 NPRM was issued in January 1998, manufacturers of handheld engines indicated to us that there are applications, particularly for commercial equipment, in which the useful life hours of the entire piece of equipment can be surpassed in one year of typical in-use operation. Therefore, in the July 1999 SNPRM we proposed an option whereby manufacturers of handheld engines could request approval from us to adopt an emission warranty period of one year if they could demonstrate such a shorter warranty period would be appropriate for that engine/equipment combination.

We received comments from three handheld engine manufacturers and two handheld industry organizations noting that there are some handheld applications which will reach their expected useful life level in less than one year. Therefore, the commenters recommended that we adopt provisions to allow a manufacturer to select a warranty period of less than one year. In addition, we received a comment from one engine manufacturer that this special warranty provision should be available to all classes of small SI engines at or below 19 kW. With today's action, we are finalizing provisions for handheld engines only that would allow a manufacturer to request approval from us to adopt an emissions warranty period of less than two years if the manufacturer can demonstrate such a shorter warranty period is appropriate for that engine/equipment combination. In order to demonstrate that a shorter period is warranted, the manufacturer would need to submit information satisfactory to us demonstrating that the regulatory useful life is reached in less than two years for the typical piece of equipment. Normally, when we have established emission warranty periods, we have established both a years requirement and a second requirement based on hours of use (or miles in some cases). The emissions warranty lasts until one of the two levels, either years or hours, is reached. However, under the Phase 1 rule for small SI engines, we established only a years requirement for the emissions warranty because there was no useful life requirement under Phase 1 and also because handheld equipment is not equipped with an hour meter. By making this change for handheld engines, and requiring manufacturers to submit information showing that a shorter warranty period is justified, we believe the emissions warranty period will not require a manufacturer to be liable for emissions performance of equipment beyond its regulatory useful life. Alternatively, we are also adopting a provision that would allow a manufacturer to request that the emissions warranty period be the shorter of two years or the regulatory useful life if the engine/equipment is equipped with an hours meter that ensures verification of hours of use. At this time, these changes to the emission warranty period will only apply to handheld engines. We did not propose such a change for nonhandheld engines in the July 1999 SNPRM and we have not received comments from anyone suggesting that such a change for nonhandheld engines is appropriate at this time.

G. Amendments to the Small Spark-Ignition (SI) Engine and Marine SI Engines Programs

The following section addresses the amendments to the small SI engine and marine SI engine rules that have been included in today's action. These provisions were proposed in a February 1999 NPRM separate from the July 1999 SNPRM. We have chosen to combine these amendments with the Phase 2 handheld engine provisions because most of the amendments directly affect small SI handheld engines.

1. Definition of Handheld Engine

The February 1999 NPRM included modifications to the criteria used for determining whether an engine could be classified as handheld. The proposed change was made in response to comments from Honda and others. (The July 1999 SNPRM did not propose to change the existing definition of handheld engine in effect for Phase 1, but directed readers to the February 1999 NPRM noting that we had proposed a modification to the definition.) Under the February 1999 NPRM, a manufacturer would have been permitted to exceed the current handheld engine weight limit of 14 kilograms (kg), or 20 kg for augers, in cases where the manufacturer could demonstrate that the extra weight was the result of using a 4-stroke engine or other technology cleaner than the otherwise allowed 2-stroke engine. As proposed, the revised handheld definition would have been applicable for the remainder of Phase 1 and would also apply for the Phase 2 program.

The February 1999 NPRM drew supportive comments on the change to accommodate 4-stroke engines and other clean technologies. We also received comments related to this issue in response to the July 1999 SNPRM. Some of these comments advocated that we change the weight limit we have applied to handheld equipment with most commenters indicating that we should raise the weight limit to 20 kilogram for all types of equipment. Other commenters to the July 1999 SNPRM suggested that it was not appropriate to modify the weight limit to address certain technologies and that the same limit should apply regardless of technology type.

With today's action, we are adopting the revised handheld engine definition as proposed in the February 1999 NPRM. Therefore, the weight limit for handheld equipment will remain at 14kg (20kg for augers), except for cases where the manufacturer can demonstrate that the excess weight is the result of using a four stroke engine or advanced two stroke technology acceptable to the Administrator. We conclude that is appropriate to allow equipment classified as ''handheld'' to exceed the 14 kg weight limit (or 20 kg limit for augers) if the equipment exceeds the limit because of the use of 4-stroke engines or other clean technology. Otherwise, equipment manufacturers that might want to use a cleaner technology engine in a piece of equipment historically powered by a 2-stroke engine, would be prevented from doing so because of the extra weight of the cleaner engine. That result would conflict with the purpose of the program, which is to encourage technological innovation and transition to cleaner power sources for equipment. This change should prevent the undesirable situation where a manufacturer is prohibited from using cleaner technologies because of our regulatory weight limit.

We do not believe that it is appropriate to change the weight limit for all engines. The current weight limit of 14 kg for handheld equipment was established in our Phase 1 final rule after a review of available products ascertained that 14 kilograms was the break point that the market had chosen between equipment types powered with 2-stroke engines and those powered by 4-stroke engines (see 60 FR 34591; July 3, 1995). No new information was submitted with the July 1999 SNPRM comments that would cause us to believe the current weight limit is inappropriate. In addition, as noted in the February 1999 NPRM, raising the weight limit across the board would allow manufacturers to convert current 4-stroke nonhandheld equipment to dirtier 2-stroke power. We believe that, in the long run, such an increase in weight limit would encourage this change if the 2-stroke engine would be cheaper. This would tend to be environmentally detrimental.

2. Engines Used in Recreational Vehicles and Applicability of the Small SI Regulations to Model Airplanes

The February 1999 NPRM included a proposal to classify model airplanes powered by small SI engines as recreational equipment and therefore exempt engines used in such applications from the small SI regulations. (In the July 1999 SNPRM, we directed readers to the February 1999 NPRM noting that we had proposed such a modification.)

The small SI rule as currently effective covers all nonroad spark-ignition engines at or below 19 kW ''used for any purpose,'' subject to certain exclusions. We provided specific exclusions for certain engines used in underground mining, for engines used in motorcycles that are subject to emission regulation under 40 CFR Part 86, for engines used in passenger aircraft, and for engines used in recreational vehicles which meet certain prescribed criteria.

To qualify as an engine used in a recreational vehicle, the engine must meet all of the following criteria: (i) The engine's rated speed is greater than or equal to 5,000 rpm; (ii) the engine has no installed speed governor; (iii) the engine is not used for the propulsion of a marine ''vessel'' as that term is defined by the U.S. Coast Guard; and (iv) the engine does not meet the criteria to be categorized as a Class III, IV or V engine (i.e., the criteria by which an engine qualifies as ''handheld''). Criteria (I) and (ii) reflect our belief that engines used to operate recreational vehicles will operate at high rated speeds and will differ significantly in design and operation from those used to power nonhandheld equipment such as lawn, garden and construction equipment. Recreational vehicles also typically have a variable throttle that is held open by the operator to achieve speeds above idle and returns to idle when released. These vehicles experience extremely transient operation. Further, these vehicles do not have the types of governors commonly present on nonhandheld lawn and garden type engines which serve to automatically open the throttle farther when the engine experiences increased loading. Increased loading is encountered when, for example, the operator moves a lawnmower from an area of short grass into an area of long grass. Finally, we believe that the steady-state test procedures adopted for the small SI rule would not be appropriate for these more transient applications.

We established criteria which serve to define an engine as ''handheld'' to restrict the use of the more lenient Class III, IV or V standards to engines in equipment that needed to be extremely light in weight so that it may be easily carried or easily supported during its operation, and/or which needed to be able to operate multipositionally. Manufacturers have historically addressed need for very low weight through the use of 2-stroke technology, which produces greater power for a given weight and size (but higher emissions) than a 4-stroke engine and does so without the need for a sump full of oil at the bottom of the engine.

We adopted the small SI rule without the knowledge that approximately 8,000 small SI engines are built each year by a variety of companies (including a number of very small entities) for specific application in model boats, aircraft and cars. We did not include these engines in any calculations of emission inventories, nor did we consider reductions from these engines or costs of compliance in the development of the Phase 1 small SI final rule or the Phase 2 proposals. We have no emission data from these engines and do not have data appropriate to determine whether the test cycle used for handheld (or nonhandheld) engines is appropriate for

these engines. These vehicles are predominantly radio-controlled model airplanes and as such are clearly ''recreational'' in nature as that term is generally understood. However, according to the definition of that term in the existing small SI rule, such engines could qualify as handheld because of their multi positional capabilities and therefore fall outside of coverage under the term ''recreational''.[5]

We received no comments on the February 1999 NPRM (or the July 1999 SNPRM) with regard to our proposed treatment of this issue. Therefore, we are amending the existing regulations and we will consider these vehicles and engines as recreational and, as a result, excluded from coverage under the small SI rule. Thus, engines used to propel vehicles in flight through air provided those engines meet the other existing criteria to be categorized as recreational, are now excluded from the scope of the rule. As noted in the February 1999 NPRM, we believe that model cars and boats are not required to operate ''multipositionally'' to complete their intended function so that the small SI engines used in model cars and boats are therefore considered ''recreational'' by the existing regulatory text and are already excluded from the small SI rule.

3. Phase-in Flexibility for Small Volume Marine SI Engine Manufacturers

We promulgated emission requirements for marine SI engines on October 4, 1996. The rules took effect with the 1998 model year for outboard engines and the 1999 model year for personal watercraft and jetboats. We developed the marine SI rule with considerable input from large volume marine engine manufacturers and their association, the National Marine Manufacturers Association (NMMA). We estimate that this rule will result in a 75% reduction in exhaust hydrocarbons when calculated from uncontrolled engines. The standards phase in via incremental reductions each year through 2006. The standards will result in considerable shifts in technology away from high emitting 2-stroke technology to cleaner 2-stroke or direct injection 2-stroke designs.

The standards are ''averaging standards'' in that we expect some engine families to be below the standards and generate emission credits while other engine families will be above the standards and use credits. The ''averaging standards'' were derived from a corporate average calculation based on the introduction of new technology across product lines. Similar to other mobile source programs, manufacturers may bank them these credits for future use or trade them between manufacturers.

We designed the phase in of the standards to permit marine engine manufacturers to introduce new technology engines and phase out old technology engines in an orderly and cost effective fashion. In addition, we developed flexible certification testing requirements and exemptions from production line testing and in-use testing requirements implemented for old technology engines to reduce the compliance costs of the rule for engines destined for phase out.

The development of the marine SI final rule took several years and involved numerous meetings with manufacturers. We published both an NPRM (see 59 FR 55930, November 9, 1994) and a SNPRM (see 61 FR 4600, February 7, 1996). We, as well as NMMA, did considerable outreach to marine engine manufacturers during this period to inform them of progress and likely requirements of various proposals. Despite this process, we received no input from small volume outboard and personal watercraft engine manufacturers until after the closing date of the comment period for the SNPRM. In this one comment, Tanaka expressed concerns about the appropriateness of the averaging standards on an engine manufacturer with likely only one engine family.[6] Tanaka also expressed doubts that credits would be available in the marketplace and questioned whether, even if available, they would be affordable to a manufacturer with a very small annual sales volume. Our Response to Comments document addressed small volume concerns by pointing out that the final rule provided reduced production line and in-use testing requirements, simplified certification procedures and administrative flexibilities for existing technology engines (the likely products of small volume manufacturers).[7] Beyond those flexibilities, the Response to Comments document explained that ''for smaller volume manufacturers the final regulation allows these manufacturers to purchase emission credits from the market place as an alternative to employing control technologies to meet the standard.''

Since implementation of the marine SI rule began, we have received further correspondence from Tanaka petitioning us to amend the rule on the basis that the rule's fleet averaging concept provides benefits to manufacturers with diverse product lines but not to a company like Tanaka, which has only one engine family—a very low production, low powered engine.[8] Tanaka argues that its competitors could sell similar engines with higher emissions because they could offset those emissions with credits from larger engines. Tanaka desires flexibility to continue production of its engine until the final phase-in of the standards at which time it will exit the market. Tanaka believes it can comply with the marine SI requirements through about the 2002 model year through engine improvement and credits it plans to generate in earlier years. After that, it desires flexibility to stage an orderly exit from the market. It does not wish to commit the funds necessary to meet the final phase in standards for its low level of U.S. sales.

Inboard Marine Corporation, a low volume manufacturer of personal watercraft engines, has also contacted us. This company maintains that it is dependent upon ''off-the-shelf'' technology to reduce its emissions. Like Tanaka, it has a narrow product line and argues that it cannot count on the averaging, banking and trading (ABT) program in the marine SI rule to provide credits through trading, nor to provide them at a reasonable price. Inboard Marine believes it can comply in the early years of the marine SI rule but may need relief in the late years of the standard phase-in. It intends to discontinue its current engine by the final phase-in year (2005) and meet the ultimate standards of 2006 with a redesigned engine.

We recognize that the marine SI standards are technology forcing. Thus, it was appropriate to include ABT provisions to facilitate their economical implementation. However, ABT is most useful to manufacturers with diverse product offerings. The two companies mentioned above appear to be at a disadvantage to their competitors because of their limited offerings. Further, we can not provide any

[5] A few of these vehicles may be controlled by flexible tether lines, but in any case they are not held in hand during operation.

[6] Letter of May 13, 1996 from Randy W. Haslam, Vice-President, Tanaka International Sales and Marketing as contained in the docket established for the amendment portion of today's action (EPA Air Docket No. A–98–16).

[7] The ''Response To Comments'' document prepared for the marine SI final rule can be found in the docket established for the amendment portion of today'' action (EPA Air Docket No. A–98–16).

[8] Letter of June 30, 1997 from Randy W. Haslam, Vice-President, Tanaka International Sales and Marketing as contained in the docket established for the amendment portion of today's action (EPA Air Docket No. A–98–16).

certainty that credits will be available to them.

In rules proposed since we promulgated the marine SI rule, we have gone to considerable lengths to provide mechanisms to ease the implementation of new standards and requirements for low volume producers. Both the Phase 2 FRM for nonhandheld SI engines and the Nonroad CI Phase 2 and 3 NPRM contain numerous special provisions to delay or otherwise ease the impact of the standards on low volume engine families, low volume equipment manufacturers or low volume engine manufacturers. By contrast, the marine SI rule contains no such provisions.

In response to these comments, we proposed provisions in the February 1999 NPRM that would modify the marine SI rule to permit small volume engine manufacturers to have family emission limits (FELs) in excess of applicable standards where credits are not available to cover such excess. This proposed provision was limited to one period of four consecutive model years which cannot begin until the 2000 model year. We noted our belief that the affected manufacturers could likely make changes to the affected engines to achieve compliance with standards in the early years and even bank a few credits, but may have more difficulty as the standards tighten later in the phase-in. As proposed, this flexibility would have expired at the end of the 2009 model year. We noted our belief that this expiration date would provide adequate time for small volume engine manufacturers to adapt off the shelf technology to their engines, if available, or to redesign their engines to comply with the final standards. We also noted that the inclusion of this provision was consistent with our approach in other rules and it would meet the needs of small volume manufacturers without creating adverse impacts on air quality or adverse competitive situations. Further, we noted that the way we structured this proposed provision could lead the affected manufacturers to clean up their engines more in the early years than their competitors. As proposed, the applicability of this provision was limited to engine manufacturers who sell no more than 1000 marine outboards and personal watercraft engines per year in the United States.

All comments received on the proposed flexibility provisions for small volume marine SI engine manufacturers contained in the February NPRM were favorable. Based on the technological limitations that these small volume manufacturers have, and their limited abilities to use flexibilities offered by ABT to avoid increased costs, we continue to believe that additional flexibility is appropriate. Therefore, with today's action, we are adopting the flexibility provisions as proposed in the February 1999 NPRM. Under these provisions, small volume marine SI engine manufacturers will be allowed to have family emission limits (FELs) in excess of applicable standards where credits are not available to cover such excess. This provision is limited to one period of four consecutive model years which cannot begin until the 2000 model year. This flexibility will expire at the end of the 2009 model year. These flexibility provisions are limited to engine manufacturers who sell no more than 1,000 marine outboards and personal watercraft engines per year in the United States.

The implementation of this flexibility for small volume marine SI engine manufacturers does not change our overall conclusion that the category of marine SI engines will allow the greatest achievable emission reduction considering technology and cost.

4. Replacement Engines

In a recent direct final rule, we modified our regulations applicable to small SI and marine SI engines (see 62 FR 42638, August 7, 1997) to permit the sale of uncertified engines for replacement purposes. The direct final rule addressed limited instances involving equipment built before our regulations went into effect where engine replacement is a more economical alternative than engine repair and certified engines are not available to fit.

Under the direct final rule, the engine manufacturer being approached to sell an uncertified engine for replacement purposes must first ascertain that no certified engine produced by itself or the manufacturer of the original engine (if different) is available with suitable physical or performance characteristics to re-power the equipment. If the manufacturer determines that no certified engine is available that will fit or perform adequately, it can sell an uncertified engine subject to certain controls. For example, the manufacturer must take the old engine in exchange and the new engine must be clearly labeled for replacement purposes only.

Our small SI and marine SI engines regulations adopt the Clean Air Act definition for the term ''manufacturer.'' We have become concerned that the term ''manufacturer'' as defined in the Clean Air Act can include an importer who may have had nothing to do with the actual production of the engine.[9] In such a case the requirement to ascertain whether a certified engine produced by itself has suitable physical or performance characteristics could lead to abuse. We are concerned that importers could misinterpret this provision to permit, for example, an equipment operator to import an uncertified engine and determine, since the importer does not make engines, that no certified engines are available from itself to appropriately power the vehicle. Therefore, in the February 1999 NPRM we proposed to amend the replacement engine provisions in both the small SI and marine SI engine rules to require that, in cases where a replacement engine might be imported, the determination be made by the manufacturer's U.S. representative of the company holding a current certificate of conformity from EPA for the particular make of engine requiring replacement. We proposed as an alternative, and especially if no such entity exists (as may happen in a piece of imported equipment built prior to the effective date of our regulations), the equipment operator could approach other engine manufacturers to obtain a suitable replacement engine under the existing replacement engine provisions.

We received no comments objecting to our proposed treatment of the replacement engine issue. Therefore, today's action amends the replacement engine provisions for small SI engines and marine SI engines as proposed.

III. What Are the Projected Impacts of This Final Rule?

A. Environmental Benefit Assessment

National Ambient Air Quality Standards (NAAQS) have been set for a number of criteria pollutants, including ozone (O_3), which adversely affect human health, vegetation, materials and visibility. Concentrations of ozone are impacted by HC and NO_X emissions. We believe that the Phase 2 standards being adopted today for handheld engines will reduce emissions of HC and NO_X and help most areas of the nation in their progress towards attainment and maintenance of the NAAQS for ozone. The following section provides a summary of the roles of HC and NO_X in ozone formation. The following section also addresses the estimated emissions impact of this rule, and the health and

[9] Section 216(1) of the Clean Air Act defines ''manufacturer'' as ''any person engaged in the manufacturing or assembling of new * * * nonroad engines or importing such * * * engines for resale * * * but shall not include any dealer with respect to * * * new nonroad engines received by him in commerce'.

welfare effects of ozone, CO, and hazardous air pollutants.

1. Roles of HC and NO_X in Ozone Formation

Both HC and NO_X contribute to the formation of tropospheric ozone through a complex series of reactions. Our primary reason for controlling emissions from small SI handheld engines is the role of their HC emissions in forming ozone. Of the major air pollutants for which NAAQS have been designated under the CAA, the most widespread problem continues to be ozone, which is the most prevalent photochemical oxidant and an important component of smog. Ozone is a product of the atmospheric chemical reactions involving oxides of nitrogen and volatile organic compounds. These reactions occur as atmospheric oxygen and sunlight interact with hydrocarbons and oxides of nitrogen from both mobile and stationary sources.

A critical part of this problem is the formation of ozone both in and downwind of large urban areas. Under certain weather conditions, the combination of NO_X and HC has resulted in urban and rural areas exceeding the national ambient ozone standard by as much as a factor of three. Thus it is important to control HC over wider regional areas if these areas are to come into and maintain compliance with the ozone NAAQS.

2. Health and Welfare Effects of Tropospheric Ozone

Short-term (1–3 hours) and prolonged (6–8 hours) exposures to ambient ozone at levels common in many cities have been linked to a number of health effects of concerns. For example, increased hospital admissions and emergency room visits for respiratory causes have been associated with ambient ozone exposures at such levels. Repeated exposures to ozone can make people more susceptible to respiratory infection, result in lung inflammation, and aggravate pre-existing respiratory diseases such as asthma. Other health effects attributed to ozone exposures include significant decreases in lung function and increased respiratory symptoms such as chest pain and cough. These effects generally occur while individuals are engaged in moderate or heavy exertion.

Children active outdoors during the summer when ozone levels are at their highest are most at risk of experiencing such effects. Other at-risk groups include adults who are active outdoors (e.g., outdoor workers), and individuals with pre-existing respiratory disease such as asthma and chronic obstructive lung disease. In addition, longer-term exposures to moderate levels of ozone present the possibility of irreversible changes in the lungs which could lead to premature aging of the lungs and/or chronic respiratory illnesses. Ozone also affects vegetation and ecosystems, leading to reductions in agricultural and commercial forest yields, reduced growth and survivability of tree seedlings, and increased plant susceptibility to disease, pests, and other environmental stresses (e.g., harsh weather). In long-lived species, these effects may become evident only after several years or even decades, thus having the potential for long-term effects on forest ecosystems. Ground-level ozone damage to the foliage of trees and other plants also can decrease the aesthetic value of ornamental species as well as the natural beauty of our national parks and recreation areas.

Ozone chemically attacks elastomers (natural rubber and certain synthetic polymers), textile fibers and dyes, and, to a lesser extent, paints. For example, elastomers become brittle and crack, and dyes fade after exposure to ozone. Finally, by trapping energy radiated from the earth, tropospheric ozone may contribute to heating of the earth's surface via the ''greenhouse effect,'' thereby contributing to global warming.[1] Tropospheric ozone is also known to reduce levels of UVB radiation reaching the earth's surface.[2]

3. Estimated Emissions Impact of this Final Rule

Table 5 presents the emission inventories for the handheld engines covered by today's action under both the baseline scenario (i.e., with Phase 1 controls applied) and the controlled scenario (i.e., with the Phase 2 controls applied). Table 5 also presents the expected emission reductions due to the Phase 2 $HC+NO_X$ standards being adopted today. The emission standards adopted in today's action are expected to reduce average in-use exhaust $HC+NO_X$ emissions from small SI handheld engines by approximately 70 percent beyond Phase 1 standards for handheld engines by the year 2010, by which time a complete fleet turnover is expected. This translates into an annual nationwide reduction of nearly 500,000 tons of exhaust $HC+NO_X$ in the year 2025 over that expected from Phase 1.

TABLE 5.—PROJECTED ANNUAL EXHAUST $HC+NO_X$ EMISSIONS FROM HANDHELD EQUIPMENT (TONS/YEAR)

Year	With phase 1 controls only	With phase 2 controls	Tons reduced due to the phase 2 program [a]	Percentage reduction
2000	421,000	421,000	.....	.....
2005	471,000	269,000	202,000	43.0
2010	525,000	155,000	373,000	70.5
2015	579,000	170,000	412,000	70.5
2020	633,000	186,000	450,000	70.6
2025	687,000	202,000	488,000	70.6

[a] Includes a small benefit for California engines that would need to comply with the more stringent EPA standards.

These emission reduction estimates were developed using our NONROAD emissions model. As previously stated, Husqvarna/FHP submitted a list of questions on our assumptions in the cost effectiveness for the SNPRM. (The list was prepared by the National Economic Research Associates (NERA)). Some of the questions led us to review several inputs to the NONROAD model from which the rulemaking benefits were calculated. The inputs that were reviewed included the professional/consumer split for the largest handheld applications as well as the load factor assumed for handheld applications. Based on conversations with the major manufacturers of professional equipment and a review of available literature with regard to the load factor, we have made several modifications to the NONROAD model for the final rulemaking analysis. The modifications include class specific estimates of professional/consumer splits for chainsaws, blowers, and trimmers, and revised load factor estimates for

chainsaws, blowers, and trimmers. As a result of these changes, the handheld emissions inventory estimates have increased significantly, resulting in an increase in the estimated emission benefits and improved cost-effectiveness estimates compared to the July 1999 SNPRM. The reader is directed to Chapter 6 of the RIA for today's action for a more detailed description of the changes to the NONROAD model and a more detailed presentation of the expected $HC+NO_X$ emission reductions. Because there are so few engines expected to be certified under the new Class I–A and Class I–B standards, we have not included any emissions from such engines in the $HC+NO_X$ inventory or benefit projections.

Reductions in CO levels beyond Phase 1 levels, due to improved technology, are also to be expected but have not been estimated because we do not believe we can accurately quantify the expected benefit. In addition, along with the control of hydrocarbons, the newly adopted standards should be effective in reducing emissions of those hydrocarbons considered to be hazardous air pollutants (HAPs), including benzene and 1,3-butadiene. However, the magnitude of reduction will depend on whether the control technology reduces the individual HAPs in the same proportion as total hydrocarbons. We have not attempted to quantify the anticipated reductions in HAPs due to this rule.

The intent of the amendments for small SI and marine SI engines included in this rule (as described in section II.G.) is to reduce the burden or prevent abuse of various provisions of several existing rules. As a result, we expect no significant air quality impacts one way or the other as a result of the amendments. The provisions to revise the handheld engine definition to accommodate cleaner but heavier engines remove a barrier to the incorporation of cleaner engine technology in handheld equipment. The provisions to exempt recreational engines used to propel model aircraft are not expected to have any significant impact on air quality. As noted earlier, the engines subject to the recreational exemption included in today's action have never been included in small SI inventory calculations or in benefits attributed to the small SI rules. The revisions to provide phase-in flexibility to small marine engine manufacturers will also have no significant impact on air quality. The marine rule revisions are designed to encourage these companies to clean up their engines as much as possible in the early phase-in years and may actually result in the production of small quantities of engines that are cleaner than those of similar power built by larger competitors using credits. Lastly, the revisions to replacement engine provisions will reduce the likelihood of abuse in cases where older design engines may be desired for replacement needs.

4. Health and Welfare Effects of CO Emissions

CO is a colorless, odorless gas which can be emitted or otherwise enters into ambient air as a result of both natural processes and human activity. Although CO exists as a trace element in the troposphere, much of human exposure resulting in elevated levels of carboxyhemoglobin (COHb) in the blood is due to incomplete fossil fuel combustion, as occurs in small SI engines. The concentration and direct health effect of CO exposure are especially important for small SI handheld engines because the operator of a handheld application is close to the equipment as it functions. In some applications, the operator must be adjacent to the exhaust outlet and is in the direct path of the exhaust as it leaves the engine.

The toxicity of CO effects on blood and tissues, and how these effects manifest themselves as organ function changes, have also been topics of substantial research efforts. Such studies provided information for establishing the National Ambient Air Quality Standard for CO. The current primary and secondary NAAQS for CO are 9 parts per million for the one-hour average and 35 parts per million for the eight-hour average.

5. Health and Welfare Effects of Hazardous Air Pollutant Emissions

The focus of today's action is reduction of HC emissions as part of the solution to the ozone nonattainment problem. However, direct health effects are also a reason for concern due to direct human exposure to emissions from small SI handheld engines during the operation of handheld equipment. Of specific concern is the emission of hazardous air pollutants (HAPs). In some applications, the operator must be adjacent to the exhaust outlet and is in the direct path of the exhaust as it leaves the engine. Today's action should be effective in reducing HAPs such as benzene and 1,3-butadiene, in so far as these are components of the HC emissions being reduced by the Phase 2 standards.

Benzene is an aromatic hydrocarbon which is present as a gas in both exhaust and evaporative emissions from motor vehicles. Benzene in the exhaust, expressed as a percentage of total organic gases (TOG), varies depending on control technology (*e.g.,* type of catalyst) and the levels of benzene and aromatics in the fuel, but is generally about three to five percent. The benzene fraction of evaporative emissions depends on control technology (*i.e.,* fuel injector or carburetor) and fuel composition (*e.g.,* benzene level and Reid Vapor Pressure, or RVP) and is generally about one percent. As more fully discussed in the Regulatory Impact Assessment for this rulemaking, EPA has recently reconfirmed that benzene is a known human carcinogen by all routes of exposure. Respiration is the major source of human exposure. At least half of this exposure is by way of gasoline vapors and automotive emissions. Long-term exposure to high levels of benzene in air has been shown to cause cancer of the tissues that form white blood cells. Among these are acute nonlymphocytic3 leukemia, chronic lymphocytic leukemia and possibly multiple myeloma (primary malignant tumors in the bone marrow), although the evidence for the latter has decreased with more recent studies.

1,3-Butadiene is formed in vehicle exhaust by the incomplete combustion of the fuel. It is not present in vehicle evaporative and refueling emissions, because it is not present in any appreciable amount in gasoline. 1,3-Butadiene accounts for 0.4 to 1.0 percent of total exhaust TOG, depending on control technology and fuel composition. As discussed more fully in the Regulatory Impact Assessment for this rulemaking, 1,3-Butadiene was classified by EPA as a Group B2 (probable human) carcinogen in 1985. This classification was based on evidence from two species of rodents and epidemiologic data. EPA recently prepared a draft assessment that would determine sufficient evidence exists to propose that 1,3-butadiene be classified as a known human carcinogen.

B. Cost and Cost-Effectiveness

We have calculated the cost-effectiveness of the Phase 2 standards contained in today's action by estimating costs and emission benefits for these engines. We made our best estimates of the combination of technologies that engine manufacturers might use to meet the new standards, best estimates of resultant changes to equipment design, engine manufacturer compliance program costs, and fuel savings in order to assess the expected economic impact of the final Phase 2 emission standards for handheld engines. Emission benefits are taken

from the results of the environmental benefit assessment (see section III.A. above). The cost of this rule will be approximately $180 million annually, the result of adding manufacturer costs ranging from approximately $20 for a typical low cost residential string trimmer to approximately $56 for a typical piece of commercial equipment. The resulting cost-effectiveness of the Phase 2 standards is approximately $830 per ton of $HC+NO_X$ if fuel savings are not taken into account. If fuel savings are considered as a credit against cost, the cost-effectiveness calculation results in approximately $560 per ton of $HC+NO_X$. This section describes the background and analysis behind these results.

In the July 1999 SNPRM, we requested comment on our cost analysis and any relevant information that would assist us in revising the analysis as appropriate. Comments on this topic were received by Husqvarna/FHP who had hired NERA to perform a study of the incremental cost and cost effectiveness using our cost data and industry-supplied cost data, separately. NERA performed a cost benefit analyses for each set of standards, those being proposed (50–50–72 (g/kW-hr)) and those in an alternative set (72–72–87 (g/kW-hr)). NERA performed the analysis on a class basis (Classes IV and V separately) and incrementally from Phase 1 to 72–72–87 and from 72–72–87 to 50–50–72 based on the technology development situation of Husqvarna/FHP. NERA significantly underestimated the benefits of this rule due to differences in modeling assumptions NERA used compared to EPA's current NONROAD model. Additionally, some of NERA's cost estimates were higher than estimates documented in greater detail by other sources (including manufacturers) and which formed the basis for our cost analysis. NERA also submitted a list of questions on our SNPRM cost analysis requesting clarification on a number of items. A list of these questions and our responses are listed in the Summary and Analysis of Comments document in the docket. The estimates of cost and cost effectiveness we have made for this rulemaking are calculated on the basis of the standards finalized in this rulemaking (50 g/kW-hr in Classes III and IV and 72 g/kW-hr in Class V) compared to the Phase 1 standards. (For equipment subject to the State of California's regulations beginning with the 2000 model year, we have estimated the additional costs required to have that equipment comply with the more stringent federal when they take effect. Similarly, we estimate the emission reductions that would occur for these pieces of equipment. This presumes California will not revise its standards in the meantime.)

Nevertheless, we have reviewed NERA's analyses and have the following responses with regard to several specific points raised by the NERA report. With respect to NERA's concerns over licensing fees, we have chosen to use the licensing fee schedule published by John Deere even though John Deere anticipates agreements with manufacturers may result in a lower fee structure. NERA believes we did not include the cost of modifying the fuel system when developing the costs of the compression wave technology, but we did in fact do so, using information supplied by John Deere Consumer Products, the industry member with the most experience in developing this technology. The EPA costs of adding a catalyst are lower than estimated by NERA which apparently used confidential data. The catalyst cost information used by EPA is based upon publicly available estimates provided by the catalyst industry who should be the best source for accurately estimating catalyst costs. Finally, NERA may have assumed the use of catalysts in Class V equipment which may have added to their cost compared to ours since we do not believe catalysts need be used in Class V equipment.

The analysis for this final rule is based on data from engine families certified to our Phase 1 standards, and information on the latest technology developments and related emission levels. The analysis does not include any production volumes that are covered by the California ARB's standards (except to account for the incremental costs that will be incurred as manufacturers must certify their non-pre-empted California engines to meet the more stringent EPA Phase 2 standards). The California ARB has already begun implementing a second round of emission standards for many of these engines prior to these federal Phase 2 regulations. Therefore, this analysis only accounts for costs for each engine sold outside California and those engines sold in California that are not covered by the California ARB rules, such as those that California determined are used in farm and construction equipment. We assumed that any Phase 1 engine design that would need to be modified to meet Phase 2 standards incurred the full cost of that modification, including design cost. Similarly, the cost to equipment manufacturers was assumed to be fully attributed to this federal rule even if an equipment manufacturer would have to make the same modifications in response to the California ARB regulations. The details of our cost and cost-effectiveness analyses can be found in Chapters 4 and 7 of the Final RIA for this rule.

With regard to the amendments for small SI and marine SI engines contained in today's action (as described in section II.G.), we do not expect the revisions to increase costs for any entity. In fact, the revisions to exempt recreational engines used to propel model aircraft will eliminate potential costs under the small SI rule for affected manufacturers. The revisions to the handheld definition will provide greater flexibility in engine choice to handheld equipment manufacturers. The phase-in flexibility being adopted under the marine SI rule should reduce adverse economic impacts of that rule on small entities. Lastly, the revisions to replacement engine provisions serve only to remove a potential unintended benefit that would accrue only to importers of replacement engines who were not also engine producers. Therefore, because these amendments alter existing provisions, and that alteration provides regulatory relief, there are no additional costs to original equipment manufacturers associated with the amendments contained in today's action.

We developed costs and emission reductions associated with the Phase 1 small SI rule in support of the July 3, 1995 final rulemaking. We developed costs and emission reductions associated with the marine SI rule in support of the October 4, 1996 rulemaking. We developed costs for Phase 2 small SI nonhandheld engines in support of the March 3, 1999 rulemaking and cost for Phase 2 small SI handheld engines in support of today's action. We do not believe the amendments being adopted today affect the costs and emission reductions published as part of those rulemaking analyses.

1. Class I–A and Class I–B Costs

No costs for Class I–A are included in this Phase 2 regulation. This is due to several factors. First, costs for research and development for engines in Class I–A are included in the research and development of handheld engine families (i.e., Classes III, IV, and V) since they are expected to be the same engine families, but would just be allowed to be used in nonhandheld applications. Second, certification and PLT testing for these engine families developed for use in handheld

applications will likely be used toward certification for Class I–A. In regards to benefits, no benefits for Class I–A engine families were estimated due to the anticipated limited use (i.e., small niche markets) of these engines in nonhandheld applications. Because no Class I engine families currently exist in this displacement range, we do not expect any loss in the Phase 2 Class I emission benefits from adoption of the Class I–A standards.

The costs for Class I–B include only certification to the Phase 2 regulation. Our Phase 1 certification database (as of September 1998) indicates there are only three engine families (two of which meet the small volume engine family cutoff) that would be certified to this class, two are SV engines and one is an OHV engine, all with similar emission results for $HC+NO_x$. The engine families can already meet the newly adopted emission standards for this class and therefore no additional variable costs or fixed costs have been included for research and development or production. In addition, the Phase 2 program allows small volume engine families and manufacturers an option to perform PLT. No emission benefits have been included for it is not known if all of the engine families in this newly designated displacement category will utilize the new class due to the fact that these engines must be certified to the California ARB standards (16.1 g/kW-hr HC+NOx for engines between 60cc and 225cc) if they are to be sold in California. Also, the low production estimates for engine families in this class are a very small fraction of the overall engine sales in this category which make up the benefits for the Phase 2 nonhandheld engine rulemaking and therefore should have no appreciable impact on the emission benefits of the Phase 2 rule for nonhandheld engines.

2. Handheld Engine Costs

The engine cost increase is based on incremental purchase prices for new engines and is comprised of variable costs (for hardware, assembly time and compliance programs), and fixed costs (for R&D and retooling). Variable costs were applied on a per engine basis and fixed costs were amortized at seven percent over five years. Engine technology cost estimates were based on a study performed by ICF and EF&EE in October 1996 entitled ''Cost Study for Phase Two Small Engine Emission Regulations'' and cost estimates provided by industry. Details of the assumed costs and analysis can be found in Chapters 3, 4, 5, and 7 of the Final RIA.

Analysis of the Phase 1 certification database, as of September 1998, was conducted to determine a potential impact of the Phase 2 standards on each manufacturer assuming the ABT program would be available to engine manufacturers. While the ABT program allows credit exchanges across classes, this analysis considered only ABT within each class since some manufacturers produce substantially in only one handheld class. The assumed schedule for implementing emission improvements for a manufacturer's engine families was based on the phase in schedule used to develop the fleet average emission standards for each engine class (i.e., 25% of production the first year, 50% the second year, 75% the third year, and 100% the fourth year, excluding any small volume engine families). The cost analysis was updated for this final rule with consideration of additional information submitted to us by manufacturers.

The Phase 2 emission standards for this diverse industry will impact companies differently depending on a company's current product offering and related deteriorated emission characteristics used in establishing FELs for use in averaging emissions across engine families. Some companies may improve the emission characteristics of their large volume engine families to provide credits for their smaller volume families. The real world impact on engine manufacturers will also be influenced by a manufacturer's ability to reduce the emissions from its major impact engine family in light of competition with others in the marketplace. For this cost analysis, we have assumed that Class III engines will utilize compression wave technology with a catalyst. For Class IV, we have assumed manufacturers will primarily use compression wave technology with a catalyst on half of their engines, and a smaller number of engines will use stratified scavenging with a catalyst or 4-stroke technology. We have assumed Class V engines will utilize compression wave technology.

3. Handheld Equipment Costs

In most cases, the companies that manufacture engines for use in handheld equipment also manufacture the equipment. There are a small number of independent equipment manufacturers which do not make their own engines. Due to the overwhelming number of equipment models manufactured by engine/equipment manufacturers compared to the small number of independent equipment manufacturers, information for this analysis was taken from our certification database which contains information from the engine/equipment manufacturers on Phase 1 engines. Additional information was added from the auger equipment manufacturers who have been in touch with us throughout the Phase 2 process. The costs for equipment conversion for handheld equipment were derived from the ICF/EF&EE cost study [10] which contains estimates based on the engine technology being utilized. Full details of our cost analysis can be found in Chapter 4 of the Final RIA. We have assumed that capital costs for equipment will be amortized at seven percent over five years.

The cost analysis for this rulemaking assumes that the bulk of Class III through V engines will be converted to either compression wave technology or compression wave technology with a catalyst. In addition, in Class IV the cost analysis assumes some engines will be converted to stratified scavenging with a catalyst or 4-stroke technology. The equipment impact was dependent on the split in technologies assumed among engines in each engine class since engine manufacturers produce almost all of the handheld equipment. The equipment design impacts with the compression wave technology with catalyst or the stratified scavenging technology with catalyst are assumed to include injection mold design change for the engine shroud. Modifications to the shroud design would be made to accommodate items including cooling patterns for the engine and the muffler/exhaust gas temperatures, heat shields, and potentially additional room to accommodate a potentially slightly larger carburetor and other related fuel system components. Mini 4-strokes require a total redesign of the engine shroud, tank placements, etc. for a manufacturer currently producing a 2-stroke engine. As noted earlier, this analysis assumes that Class III engines will employ compression wave technology with a catalyst. The analysis assumes that the bulk of Class IV engines will use compression wave technology either with or without a catalyst, and a smaller number of Class IV engines will use stratified scavenging technology with a catalyst or 4-stroke technology. The analysis assumes that Class V engines will utilize compression wave technology. Equipment costs are addressed in detail in the Regulatory Impact Analysis for this rule and rely

[10] ICF and Engine, Fuel and Emissions Engineering, Incorporated; ''Cost Study for Phase Two Small Engine Emission Regulations'', Draft Final Report, October 25, 1996, in EPA Air Docket A–93–29, Item #II–A–04.

heavily on analyses conducted by ICF Consulting Group as contracted by EPA. These cost estimates were modified if justified by data supplied by industry members experienced in producing this equipment.

4. Handheld Operating Costs

The estimate of total life-cycle operating costs for this final rule include any expected decreases in fuel consumption. Life cycle fuel cost savings have been calculated per class using the NONROAD emission model. The model calculates fuel savings from the years of implementation to 2027 and takes into account factors including equipment scrappage, projected yearly sales increase per equipment type, and engine power. Details on the assumptions and calculations on fuel savings are included in Chapters 4 and 7 of the Final RIA.

Based on information described in Chapter 3 of the Final RIA, a fuel consumption savings of 30 percent has been assumed from the 2-stroke engines as they are converted to compression wave, mini 4-stroke, or stratified scavenging design with lean combustion. The new designs are expected to result in improved fuel economy because they may run on a leaner air/fuel mixture with or without improved combustion efficiency, and because they may reduce or altogether eliminate scavenging with fuel/oil mixture.

5. Cost Per Engine and Cost-Effectiveness

a. *Cost Per Engine.* Total costs for today's action will vary per year as engine families are phased-in to compliance with the Phase 2 standards over several years, as capital costs are recovered, and as compliance programs are conducted. The term ''uniform annualized cost'' is used to express the cost of today's action over the years of this analysis.

The methodology used for estimating the uniform annualized cost per unit is as follows. Cost estimates from 1996 and 1997 model years, for technology and compliance programs respectively, were estimated and increased to 1998 dollars using the GDP Implicit Price deflator (1.9% in 1996, 1.9% in 1997 and 1.0% in 1998).[11] While a number of technologies are potentially possible for these engines, the costs for three technologies were chosen in order to simplify the estimates of the technologies manufacturers will choose to implement in the future years. Engine technology costs for engine designs in Class III were based on the compression wave technology with a catalyst. Engine technology costs for most of the engines in Class IV were based on compression wave design with half of those engines using a catalyst, and the other half without a catalyst. We assumed compression wave technology costs for all engines we have good reason to anticipate will use this technology. For some engines we do not know what technology option will be used; for these we assume the cost of the compression wave technology, including appropriate licensing fees. The costs for the compression wave technology were based on comments submitted by John Deere. We also assumed a number of Class IV engines would use stratified scavenging or 4-stroke technology. The cost estimates for the catalyst system were taken from MECA and ICF, for shorter durability catalysts. We did not use Echo's cost estimate which was higher than the MECA data suggests would be necessary. We believe Echo's cost estimate may have been high since their current experience is in using catalysts on relatively high emitting Phase 1 engines. The cost for the stratified scavenging design with a catalyst was separately estimated for that technology again based upon information supplied by ICF. The costs for the 4-stroke technology were taken from Ryobi's comments on the July 1999 SNPRM. Engine technology costs for engine designs in Class V were also based on the compression wave technology, however no catalyst cost was applied for it is assumed that the Class V standards will not require catalysts. We believe the cost estimates used in this analysis, including licensing fee, would be similar to the costs of other technologies manufacturers might use to comply with the new standards.

Our Phase 1 database was analyzed to determine the number of engine families per class that will likely incorporate the emission reduction technologies taking into consideration the availability of the proposed ABT program. The estimated costs per year are calculated by multiplying the number of engine families and corresponding production volume by the fixed and variable costs per technology grouping, respectively. The variable engine/equipment costs have been marked up using a 29% retail markup. All markups are based on industry-specific information from the Phase 1 program, additional analyses performed by EPA and consideration of the comments received on this item in the docket. For compliance program costs, the costs for certification bench aging are estimated based on the number of engine families in our Phase 1 database and the expected certification date under the phase in of the Phase 2 standards. To complete the calculation of the uniform annualized cost per unit, all of these costs are summed per year and then discounted seven percent to the first year of Phase 2 regulation. The yearly costs are summed and a uniform annualized cost is calculated. The uniform annualized cost is then divided by production at two points in time, the first year of full implementation of the Phase 2 standards (i.e., 2005 for Classes III and IV and 2007 for Class V), and the last year of this analysis (i.e., 2027), to obtain two separate uniform annualized costs per unit. These two values are presented in Table 6. The total cost to industry in the first year (i.e., 2002 model year costs for Class III and Class IV engines and equipment and 2004 model year costs for Class V engines and equipment) will be substantially less since only a portion (approximately 25%) of the engines need comply with the final standards at that time.

The yearly fuel savings (tons/yr) per class are calculated by the NONROAD model. The yearly fuel savings (tons/yr) are converted to savings (in 1998$) through conversion to gallons per year multiplied by $0.765 (a 1995 average refinery price of gasoline to end user, without taxes) increased to 1998 using the GDP deflator for 1996, 1997 and 1998. The yearly fuel savings are then calculated by dividing the yearly fuel savings by the population of Phase 2 engines in each engine class. The reader is directed to Chapter 7 of the Final RIA for more details of this analysis.

[11] Information obtained from the Bureau of Economic Analysis' website (www.bea.doc.gov/bea/dn/niptbl-d.htm#).

TABLE 6.—COST PER UNIT AND YEARLY FUEL SAVINGS (1998$)
(Unit Costs Based on Average Uniform Annualized Costs)

Engine class	Cost Per Unit		Yearly fuel savings
	First Full Year (2005 in class III/IV 2007 in class V)	Long term (2027)	
III	$23.00	$16.00	$0.50
IV	20.00	14.00	1.70
V	56.00	39.00	30.80

Note: Nearly all of the handheld industry is vertically integrated. Therefore it is most appropriate to acknowledge cost/unit, rather than cost/engine, because the engine and equipment manufacturers are the same in nearly all cases.

b. Cost-Effectiveness. We have estimated the cost-effectiveness (i.e., the cost per ton of emission reduction) of the Phase 2 $HC+NO_X$ standards over the typical lifetime of the handheld equipment that are covered by today's action. (Both a ''high cost'' estimate and a ''mid-cost'' estimate have been prepared and are in the RIA; however, we believe the ''mid-cost'' estimate more accurately represents reasonable costs to the industry.) We have examined the cost-effectiveness by performing a nationwide cost-effectiveness analysis in which the net present value of the cost of compliance per year is divided by net present value of the $HC+NO_X$ benefits. The resultant discounted cost-effectiveness is approximately $830/ton $HC+NO_X$ without fuel savings factored in, and $560 with fuel savings taken into consideration. Chapter 7 of the Final RIA contains a more detailed discussion of the cost-effectiveness analysis. It should be noted that the cost of the compression wave technology used in this analysis assumed that other manufacturers would pay the full cost of the licensing fee as announced by John Deere in December 1998. As noted earlier, no manufacturer has agreed to the licensing fee schedule as proposed by John Deere. John Deere suggests that this licensing fee may be too high and will be lowered. If the licensing fee is lowered, the cost-effectiveness as estimated for the rulemaking would be better.

The overall cost-effectiveness of this final rule based on $HC+NO_X$ emission reductions, with fuel savings factored in, is shown in Table 7 compared to the cost effectiveness of other nonroad rulemakings, which also reflect fuel savings.

TABLE 7.—COST-EFFECTIVENESS OF THE PHASE 2 HANDHELD ENGINE STANDARDS (WITH FUEL SAVINGS) COMPARED TO OTHER NONROAD PROGRAMS

Non-road program	Cost-effectiveness	Pollutants
Phase 2 Small SI Handheld Engines	$560/ton	$HC+NO_X$
Phase 2 Small SI Nonhandheld Engines	−$507/ton	$HC+NO_X$
Phase 1 Small SI Engines	$217/ton	$HC+NO_X$
Recreational Marine SI Engines	$1,000/ton	HC
Tier 2/3 Standards for Nonroad CI Engines	$410 to $650/ton	$HC+NO_X$

IV. Public Participation

The process for developing this final rule provided several opportunities for formal public comment. We published an Advance Notice of Proposed Rulemaking (ANPRM) on March 27, 1997 (62 FR 14740) which announced the signing of two Statements of Principles (SOPs) with the small engine industry and several other interested parties. The ANPRM and included SOPs outlined possible programs which would increase the stringency of the small engine regulations compared to Phase 1 rules. Comments were received in response to this ANPRM which, in combination with the programs outlined in the ANPRM, formed the basis of the Notice of Proposed Rulemaking (NPRM) for Phase 2 standards which was published on January 27, 1998 (63 FR 3950). A public hearing was held on February 11, 1998 during which oral testimony was received on the proposal. Written comments were received during the formal comment period for the proposal and some additional written comments were received after the formal comment period closed. To expand upon comments received during the comment period and to address specific questions we had of the industry regarding technical feasibility and cost of some options for Phase 2 standards, we received additional information after the close of the formal comment period and participated in a number of phone conversations and meetings with industry representatives for this purpose. All of this information that was germane to Phase 2 handheld small SI standards, including documentation of phone calls and meetings, was included in the public docket for this Phase 2 rulemaking (EPA Air Docket A–96–55).

Subsequent to the close of the comment period for the NPRM, we continued to have discussions with industry representatives, primarily from the engine industry but also representing suppliers and technology developers. Because considerable information was received after the formal comment period closed, a Notice of Availability highlighting the supplemental information was also published on December 1, 1998 (63 FR 66081) alerting interested parties to the availability of this supplemental information. (Much of this information was relied upon in support of the Phase 2 final rule for nonhandheld engines published on March 30, 1999 (64 FR 15208).) We continued having discussions with various parties regarding the rapid and dramatic advances in low emission technologies for handheld engines. In light of this new information, and in the interest of providing an opportunity for public comment on the stringent levels being

considered for the Phase 2 handheld engine emission standards and the potential technologies available for meeting such standards, we reproposed Phase 2 regulations for handheld engines in a SNPRM on July 28, 1999 (see 64 FR 40940). We held a public hearing on August 17, 1999 and the formal written comment period closed September 17, 1999. All relevant information received, regardless of the date of receipt, was, to the maximum extent possible, considered in the development of this final rule for the Phase 2 handheld engines.

The amendments to the small SI and marine SI engine rules contained in today's action were proposed on February 3, 1999. We stated in the proposal that we would hold a public hearing if requested. No party requested a hearing. We provided a sixty-day public comment period, during which we received only comments in favor of the proposed amendments. These comments are available in the public docket for the amendments (EPA Air Docket A–98–16).

V. Administrative Requirements

A. Administrative Designation and Regulatory Analysis

Under Executive Order 12866, we must assess whether this regulatory action is ''significant'' and therefore subject to Office of Management and Budget (OMB) review and the requirements of the Executive Order (58 FR 51735, Oct. 4, 1993). The order defines ''significant regulatory action'' as any regulatory action that is likely to result in a rule that may:

(1) Have an annual effect on the economy of $100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities;

(2) Create a serious inconsistency or otherwise interfere with an action taken or planned by another agency;

(3) Materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or,

(4) Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order.

Pursuant to the terms of Executive Order 12866, we have determined that this rulemaking is a ''significant regulatory action'' because the standards and other regulatory provisions are expected to have an annual effect on the economy in excess of $100 million. An RIA has been prepared and is available in the docket associated with this rulemaking. This final rule was submitted to OMB for review as required by Executive Order 12866. As required by section 307(d)(4)(B)(ii) of the Clean Air Act, the drafts of the final rule submitted for such review, any written comments from OMB on the draft rule, all documents accompanying such drafts, and written responses thereto are in the public docket for this rulemaking.

B. Regulatory Flexibility

We have determined that it is not necessary to prepare a regulatory flexibility analysis in connection with this final rule. We have also determined this rule will not have a significant economic impact on a substantial number of small entities.

We have identified industries that would be subject to this rule and have contacted small entities and small entity representatives to gain a better understanding of the potential impacts of the Phase 2 handheld engine program on their businesses. This information was useful in estimating potential impacts of today's action on affected small entities, the details of which are more fully discussed in Chapter 8 of the Final RIA. Small entities include small businesses, small not-for-profit enterprises, and small governmental jurisdictions. Small not-for-profit organizations and small governmental jurisdictions are not expected to be impacted by this final rule because they are not directly regulated by it. Thus, our impact analysis focuses on small businesses. For purposes of the impact analysis, ''small business'' is defined by the number of employees, according to published Small Business Administration (SBA) definitions. Because handheld equipment manufacturers also tend to be the engine manufacturers, which also tend to be larger businesses, there are few small business entities involved in the analysis.

However, we desire to minimize, to the extent appropriate, impacts on those companies which may be adversely affected, and to ensure that the emissions standards are achievable. Thus, flexibility provisions for the rule (discussed earlier in section II.D.) were developed based on analysis of information we gained through discussions with potentially-affected small entities as well as analysis of other sources of information, as detailed in Chapters 8 and 9 of the Final RIA. Many of the flexibilities in today's action should benefit the engine and equipment manufacturers that do qualify as small business entities.

The economic impact of the rule on small entity engine and equipment manufacturers was evaluated using a ''sales test'' approach which calculates annualized compliance costs as a percent of sales revenue. The ratio is an indication of the severity of the potential impacts. We expect that, at worst, three small entity engine manufacturers and five small entity equipment manufacturers would be impacted by more than one percent of their sales revenue. Also, no more than two small entities would be impacted by more than three percent of their annual sales revenue, as indicated by the analysis. This base case analysis assumes that manufacturers do not take advantage of the flexibilities being offered, but that they would be able to pass through most necessary price increases to the ultimate consumer. We would thus expect today's final rule to have a minimal impact on small business entities.

However, we are adopting a number of flexibilities to further reduce the burden of compliance on any small-volume engine manufacturers, small volume equipment manufacturers and manufacturers of small-volume engine families and small-volume equipment models. We received a number of comments from handheld engine and equipment manufacturers, which generally supported the flexibilities contained in the July 1999 SNPRM, but which suggested changes in the production caps for small volume engine families and small volume equipment models. We have incorporated the suggested change to the definition of small volume equipment model in this rule, keeping in mind equity and air quality considerations. Given these flexibilities being offered to the handheld engine and equipment manufacturers, the results of the analysis suggest that of those small entities analyzed, only one small business engine manufacturer and none of the small business equipment manufacturers would likely experience an impact of greater than one percent of their sales revenue. In addition, no small business engine manufacturers and no small business equipment manufacturers would likely experience an impact of greater than three percent of their sales revenue. Our other outreach activities have also indicated that the impact of today's final rule could be minimized, given sufficient lead time to incorporate the new technology with normal model changes. Again, we have not attempted to quantify the beneficial impact on small

volume manufacturers of the lead time provided (which can include delaying the impact of these rules up until the 2008 model year for Classes III and IV and up until the 2010 model year for Class V).

Although we believe that the above-mentioned flexibility provisions will minimize any adverse impact on small entities (see Chapter 8 of the Final RIA), we have already adopted a hardship relief provision for nonhandheld engines that would also apply to handheld engines. This was developed to further ensure that standards can be achieved without undue hardship on the business entities involved. While it is difficult to project utilization of such a provision, we expect that it could further reduce any possible adverse economic impacts of this final rule.

The results of the impact analysis show minimal impacts on small businesses. We expect that such impacts will be negligible if small companies take advantage of the above-mentioned flexibilities. Most of the small companies contacted considered it likely that they would be able to pass most of their cost increases through to their customers. Many of these entities are also involved in filling niche markets, and are thus in a particularly good position to pass these costs along to the ultimate consumers. Finally, the ample lead time contained by today's rule should also allow for an orderly transition to the more advanced technology.

C. Paperwork Reduction Act

The information collection requirements in this final rule have been submitted for approval to the Office of Management and Budget (OMB) under the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.* We have prepared an Information Collection Request (ICR) document (ICR Numbers 1695.06 and 1845.01) and a copy may be obtained by mail from Sandy Farmer at U.S. Environmental Protection Agency, Office of Environmental Information, Collection Strategies Division (2822), 1200 Pennsylvania Avenue, NW., Washington, DC 20460, by email at farmer.sandy@epa.gov, or by calling (202) 260–2740. A copy may also be downloaded off the Internet at http://www.epa.gov/icr.

The information planned to be collected via this final rule is necessary to assure that the engine manufacturers required to seek certification of their engines have fulfilled all the essential requirements of these new regulations. In particular, this information will document the design of the engine for which certification is sought, the type(s) of equipment in which it is intended to be used and the emission performance of these engines based upon testing performed by or on behalf of the engine manufacturer. Additional, essential information is necessary to document the results of testing performed by the manufacturer under the production line testing program to determine that the engines, as manufactured continue to have acceptable emission performance. Finally, if the manufacturer elects to conduct testing of in-use engines under the voluntary in-use testing program, information is necessary to document the results of that in-use testing program.

Table 8 provides a listing of the information collection requirements associated with the Phase 2 program for nonroad SI handheld engines at or below 19 kW along with the appropriate OMB control numbers. The cost of this burden has been incorporated into the cost estimate for this rule. We have estimated that the public reporting burden for the collection of information required under this rule would average approximately 87,120 hours annually for the industry at an estimated annual cost of $5,360,000. The hours spent by an individual manufacturer on information collection activities in any given year would be highly dependent upon manufacturer specific variables, such as the number of engine families, production changes, and emission defects.

TABLE 8.—PUBLIC REPORTING BURDEN

Type of information	OMB Control No.
Certification	2060–0338
Averaging, banking and trading	2060–0338
Production line testing	N/A
Pre-certification and testing exemption	2060–0007
Selective enforcement audit	2060–0295
Engine exclusion determination	2060–0124
Emission defect information	2060–0048
Importation of nonconforming engines	2060–0294

Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

An Agency may not conduct or sponsor, and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for our regulations are listed in 40 CFR part 9 and 48 CFR chapter 15.

D. Unfunded Mandates Reform Act

Section 202 of the Unfunded Mandates Reform Act of 1995 (''Unfunded Mandates Act'') requires that we prepare a budgetary impact statement before promulgating a rule that includes a Federal mandate that may result in expenditure by State, local, and tribal governments, in aggregate, or by the private sector, of $100 million or more in any one year. Section 203 requires us to establish a plan for obtaining input from and informing, educating, and advising any small governments that may be significantly or uniquely affected by the rule.

Under section 205 of the Unfunded Mandates Act, we must identify and consider a reasonable number of regulatory alternatives before promulgating a rule for which a regulatory budgetary impact statement must be prepared. We must select from those alternatives the least costly, most cost-effective, or least burdensome alternative that achieves the objectives of the rule, unless we explain why this alternative is not selected or the selection of this alternative is inconsistent with law.

Because this final rule is estimated to result in the expenditure by State, local and tribal governments or the private sector of greater than $100 million in any one year, we have prepared a regulatory impact statement and have addressed the selection of the least costly, most cost-effective or least burdensome alternative. While this final rule does not impose enforceable obligations on State, local, and tribal governments, because they do not produce small SI handheld engines or equipment, we have estimated the final rule to cost the private sector an annualized cost of approximately $180 million per year (over the 20 year period from 2002 to 2021). Because small governments would not be significantly or uniquely affected by this rule, we are not required to develop a plan with regard to small governments.

The impact statement under Section 202 of the Unfunded Mandates Act must include: (1) A citation of the statutory authority under which the rule is adopted; (2) an assessment of the costs and benefits of the rule including the effect of the mandate on health, safety and the environment; (3) where feasible, estimates of future compliance costs and disproportionate impacts upon particular geographic or social segments of the nation or industry; (4) where relevant, an estimate of the effect on the national economy; and (5) a description of our consultation with State, local, and tribal officials. Because this final rule is estimated to impose costs to the private sector in excess of $100 million per year, it is considered a significant regulatory action. Therefore, we have prepared the following statement with respect to Sections 202 through 205 of the Unfunded Mandates Act.

EPA believes that today's rule represents the least costly, most cost-effective approach to achieve the air quality goals of the rule. The analysis required by the UMRA is discussed below, and in sections II.A.–D. and III.A.–B. of today's final rule notice and in the Final RIA. See the ''Administrative Designation and Regulatory Analysis'' section in today's notice for further information regarding these analyses.

1. Statutory Authority

This rule adopts standards for emissions of $HC+NO_X$ and CO from small nonroad SI handheld engines pursuant to section 213 of the Clean Air Act. Section 216 defines the terms ''nonroad engine'' and ''nonroad vehicle.'' Section 213(a)(3) requires these standards to achieve the greatest degree of emission reduction achievable through the application of technology which the Administrator determines will be available for the engines or vehicles to which such standards apply, giving appropriate consideration to the cost of applying such technology within the period of time available to manufacturers and to noise, energy, and safety factors associated with the application of such technology. Section 213(b) requires the standards to take effect at the earliest possible date considering the lead time necessary to permit the development and application of the requisite technology, giving appropriate consideration to the cost of compliance within such period and energy and safety. Section 213(d) provides that the standards shall be subject to sections 206, 207, 208 and 209 of the CAA, with such modifications of the applicable regulations implementing such sections as the Administrator deems appropriate, and shall be enforced in the same manner as standards prescribed under Section 202. Therefore, the statutory authority for this rule is as follows: sections 202, 203, 204, 205, 206, 207, 208, 209, 213, 215, 216, and 301(a) of the Clean Air Act, as amended. Moreover, this final rule is being issued pursuant to a court order entered in *Sierra Club* v. *Browner*, No. 93–0124 and consolidated cases (D.D.C.).

2. Social Costs and Benefits

The social costs and benefits of this final rule are discussed in sections III.A. and III.B. of this final rule, and in Chapters 6 through 7 of the Final RIA. Those discussions are incorporated into this statement by reference.

3. Effects on the National Economy

As stated in the Unfunded Mandates Act, macroeconomic effects tend to be measurable, in nationwide economic models, only if the economic effect of the regulation reaches 0.25 to 0.5 percent of gross domestic product (in the range of $15 billion to $30 billion). A regulation with a smaller aggregate effect is highly unlikely to have any measurable impact in macroeconomic terms unless it is highly focused on a particular geographic region or economic sector. Because the economic impact of this final rule for small SI handheld engines is expected to be far less than these thresholds, no estimate of this rule's effect on the national economy has been conducted.

4. Consultation with Government Officials

Today's final rule would not create a mandate on State, local or tribal governments, since it would not impose any enforceable duties on these entities who do not produce small SI handheld engines or equipment. Thus, we did not consult with State, local or tribal governments in the context of discussing mandated costs that would apply to such governments. However, we did consult with state governmental representatives, and with representatives of associations representing state air regulatory agencies, in the contexts of developing the most stringent achievable regulations and of addressing state ozone attainment needs. The consulted entities include the California ARB and the Northeast States for Coordinated Air Use Management (NESCAUM). These consultations are documented in the record for this rule, and are reflected in the March 1997 ANPRM, the January 1998 NPRM, the December 1998 Notice of Availability, the recently finalized Phase 2 rule for nonhandheld small SI engines and equipment, the July 1999 SNPRM, and today's final rule.

5. Regulatory Alternatives Considered

To ensure the cost-effectiveness of this final rule and still fulfill the intent of the Clean Air Act, we have adopted numerous flexibility provisions that we expect will reduce the burden of the Phase 2 program for small volume engine and equipment manufacturers and manufacturers of small volume equipment models and engine families. The flexibility provisions are discussed in section II.D. of today's final rule. Moreover, the technological options considered for the final rule's standards and related provisions are discussed in section II.A. of today's action. Section II.B. discusses the ABT program, and section II.C. discusses the compliance program for Phase 2 handheld engines.

Throughout this rulemaking process, we have considered numerous alternatives regarding the central aspects of the Phase 2 program, including stringency levels of the standards, phase in lead time periods, compliance and testing provisions, ABT provisions, and flexibility provisions. During this process, we have also considered the costs and benefits of adopting a program that consisted of these alternative approaches. In addition to the sections of today's notice mentioned above that discuss our final rule's provisions, these alternatives have been addressed in the following documents contained in the rulemaking record: For discussions of alternative levels of standards, see sections E and O in the SOP for handheld engines in Appendix A to the ANPRM, 62 FR 14740 (March 27, 1997); sections III.A.2 and IV.A of the January 27, 1998, NPRM (63 FR 3950); and sections I.B and II.A.2 of the July 28, 1999, SNPRM (64 FR 40940). Discussions of alternative phase in lead time periods are located in section C of Appendix A to the ANPRM; sections III.A.2 and IV.A of the NPRM; and sections I.B and II.A.2 of the SNPRM. For alternatives regarding compliance and testing provisions, including the ABT program, see sections G–J and section M of Appendix A to the ANPRM; sections III.B and IV.B–D of the NPRM; and sections I.B and II.B–C of the SNPRM. Alternative provisions for flexibilities are in section L of Appendix A to the ANPRM; section IV.E of the NPRM; and section II.D of the SNPRM. Assessments of costs and benefits of alternative approaches to the program that we anticipated at different stages of development of the rule are located in sections V, VI, and VIII of the NPRM; sections III.A-B and V of the

SNPRM; and in the draft RIAs for the NPRM and SNPRM. As stated above, having considered these alternatives over the course of the rulemaking, in EPA's view the final program is the least costly and most cost-effective rule that achieves the objectives of section 213(a)(3) of the Clean Air Act.

E. Congressional Review Act

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. We will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. This rule is a ''major rule'' as defined by 5 U.S.C. 804(2). This rule will be effective June 26, 2000.

F. National Technology Transfer and Advancement Act

Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (''NTTAA''), Public Law No. 104–113, Section 12(d) (15 U.S.C. 272 note), directs us to use voluntary consensus standards in its regulatory activities unless doing so would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (e.g., materials specifications, test methods, sampling procedures, and business practices) that are developed or adopted by voluntary consensus standards bodies. The NTTAA directs us to provide Congress, through OMB, explanations when we decide not to use available and applicable voluntary consensus standards.

This final rule involves technical standards. While commenters on the January 1998 NPRM suggested the use of ISO 8178 test procedures for measuring emissions, we have decided not to adopt the ISO procedures in this final rule. We believe that these procedures would be impractical because they rely too heavily on reference testing conditions. Since the test procedures in these regulations will need to be used not only for certification, but also for production line testing, selective enforcement audits, and voluntary in-use testing, we believe they must be broadly based. In-use testing is best done outside tightly controlled laboratory conditions so as to be representative of in-use conditions. We believe that the ISO procedures are not sufficiently broadly usable in their current form for this program, and therefore should not be adopted by reference. We are instead continuing to rely on the procedures outlined in 40 CFR part 90. We are hopeful that future ISO test procedures will be developed that are usable for the broad range of testing needed, and that such procedures could be adopted by reference at that point.

G. Executive Order 13045: Protection of Children's Health

Executive Order 13045, entitled ''Protection of Children from Environmental Health Risks and Safety Risks'' (62 FR 19885, April 23, 1997), applies to any rule that: (1) Was initiated after April 21, 1997 or for which a Notice of Proposed Rulemaking was published after April 21, 1998; (2) is determined to be ''economically significant'' as defined under Executive Order 12866; and (3) concerns an environmental health or safety risk that we have reason to believe may have a disproportionate effect on children. If the regulatory action meets all three criteria, we must evaluate the environmental health or safety effects of the planned rule on children, and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives we considered.

This final rule is not subject to Executive Order 13045, because substantive actions were initiated before April 21, 1997 and we published a Notice of Proposed Rulemaking before April 21, 1998. This final rule is also not subject to Executive Order 13045 because it does not involve decisions on environmental health or safety risks that may disproportionately affect children.

H. Executive Order 13132: Federalism

Executive Order 13132, entitled ''Federalism'' (64 FR 43255, August 10, 1999), requires EPA to develop an accountable process to ensure ''meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications.'' ''Policies that have federalism implications'' is defined in the Executive Order to include regulations that have ''substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.''

Under Section 6 of Executive Order 13132, EPA may not issue a regulation that has federalism implications, that imposes substantial direct compliance costs, and that is not required by statute, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by State and local governments, or EPA consults with State and local officials early in the process of developing the proposed regulation. EPA also may not issue a regulation that has federalism implications and that preempts State law, unless the Agency consults with State and local officials early in the process of developing the proposed regulation.

This final rule does not have federalism implications. It will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132. Today's final rule will not impose any enforceable duties on these entities, because they do not produce small SI handheld engines or equipment. Thus, the requirements of section 6 of the Executive Order do not apply to this rule. Although section 6 of Executive Order 13132 does not apply to this rule, we did consult with officials from the State of California in developing this rule. The State of California also regulates small SI engines and the purpose of the consultations was to develop harmonized requirements, to the extent possible, between our Phase 2 program for small SI handheld engines and California's program for the same engines.

Under section 209(e)(2) of the Clean Air Act, the State of California may adopt and enforce standards and other requirements relating to the control of emissions from new nonroad engines or vehicles if California determines that its standards will be, in the aggregate, at least as protective of public health and welfare as applicable federal standards. In such cases, other states may adopt and enforce standards that are identical to California's. Therefore, today's final rule does preempt state and local law to the extent provided by section 209(e)(2). Although this rule was proposed before the November 2, 1999, effective date of Executive Order 13132, we provided state and local officials notice and an opportunity for appropriate participation when we published the January 1998 NPRM and July 1999 SNPRM. Thus, we have complied with the requirements of section 4 of the Executive Order.

I. Executive Order 13084: Consultation and Coordination With Indian Tribal Governments

Under Executive Order 13084, we may not issue a regulation that is not required by statute, that significantly or uniquely affects the communities of Indian tribal governments, and that imposes substantial direct compliance costs on those communities, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by the tribal governments, or we consult with those governments. If we comply by consulting, Executive Order 13084 requires us to provide to the Office of Management and Budget a description of the extent of our prior consultation with representatives of affected tribal governments and a statement supporting the need to issue the regulation. In addition, Executive Order 13084 requires us to develop an effective process permitting elected officials and other representatives of Indian tribal governments ''to provide meaningful and timely input in the development of regulatory policies on matters that significantly or uniquely affect their communities.''

Today's final rule will not significantly or uniquely affect the communities of Indian tribal governments because it will not impose any enforceable obligations on them. Accordingly, the requirements of section 3(b) of Executive Order 13084 do not apply to this final rule.

VI. Statutory Authority

Authority for the actions set forth in this final rule is granted to us by sections 202, 203, 204, 205, 206, 207, 208, 209, 213, 215, 216, and 301(a) of the Clean Air Act as amended (42 U.S.C. 7521, 7522, 7523, 7524, 7525, 7541, 7542, 7543, 7547, 7549, 7550, and 7601(a)).

List of Subjects

40 CFR Part 90

Environmental protection, Administrative practice and procedure, Air pollution control, Confidential business information, Imports, Labeling, Nonroad source pollution, Reporting and recordkeeping requirements, Research, Warranties.

40 CFR Part 91

Environmental protection, Administrative practice and procedure, Air pollution control, Confidential business information, Imports, Labeling, Penalties, Reporting and recordkeeping requirements, Warranties.

Dated: March 1, 2000.

Carol M. Browner,

Administrator.

For the reasons set out in the preamble, title 40, chapter I of the Code of Federal Regulations is amended as follows:

PART 90—CONTROL OF EMISSIONS FROM NONROAD SPARK-IGNITION ENGINES

1. The authority citation for part 90 is revised to read as follows:

Authority: 42 U.S.C. 7521, 7522, 7523, 7524, 7525, 7541, 7542, 7543, 7547, 7549, 7550, and 7601(a).

Subpart A—General

2. Section 90.1 is amended by adding a sentence to the end of paragraph (a) and by revising paragraph (b)(5)(iv) to read as follows:

§ 90.1 Applicability.

(a) * * * To the extent permitted by other parts of this chapter, this part may, at the engine manufacturer's option, apply to engines with gross power output greater than 19 kW that have an engine displacement of less than or equal to one liter:

(b) * * *

(5) * * *

(iv) The engine does not meet the criteria to be categorized as a Class III, IV or V engine, as indicated in § 90.103, except for cases where the engine will be used only to propel a flying vehicle forward, sideways, up, down or backward through air;

* * * * *

3. Section 90.3 is amended by:

a. Revising the definition of ''Handheld equipment engine''.

b. Adding the words ''handheld and'' immediately preceding the word ''nonhandheld'' in the definition of ''Phase 2 engine''.

c. Adding the words ''any handheld engine family or'' immediately preceding the words ''any nonhandheld engine family'' in the definition of ''Small volume engine family''.

d. Adding a sentence to the end of the definitions of ''Small volume engine manufacturer,'' ''Small volume equipment manufacturer'' and ''Small volume equipment model''.

The revisions and additions read as follows:

§ 90.3 Definitions.

* * * * *

Handheld equipment engine means a nonroad engine that meets the requirements specified in § 90.103(a)(2)(I) through (v).

* * * * *

Small volume engine manufacturer * * * For handheld engines, the term *small volume engine manufacturer* means any engine manufacturer whose total eligible production of handheld engines are projected at the time of certification of a given model year to be no more than 25,000 handheld engines.

Small volume equipment manufacturer * * * For handheld equipment, the term *small volume equipment manufacturer* has the same meaning except that it is limited to 25,000 pieces of handheld equipment rather than 5,000 pieces of nonhandheld equipment.

Small volume equipment model * * * For handheld equipment, the term *small volume equipment model* has the same meaning except that it is limited to 5,000 pieces of handheld equipment, rather than 500 pieces of nonhandheld equipment.

* * * * *

Subpart B—Emission Standards and Certification Provisions

4. Section 90.103 is amended by:

a. Revising the heading for Table 2 in paragraph (a) introductory text.

b. Adding two new entries in numerical order to Table 2 in paragraph (a) introductory text.

c. Adding Table 4 in numerical order to paragraph (a) introductory text.

d. Removing the period at the end of paragraph (a)(2)(iv) and adding a semicolon in its place.

e. Adding paragraph (a)(2)(v).

f. Revising the first and last sentences in paragraph (a)(6).

g. Revising the first and last sentences in paragraph (a)(7).

The revisions and additions read as follows:

§ 90.103 Exhaust emission standards.

(a) * * *

TABLE 2.—PHASE 2 CLASS I–A, CLASS I–B, AND CLASS I ENGINE EXHAUST EMISSION STANDARDS

(grams per kilowatt-hour)

Engine class	$HC+NO_X$	$NMHC+NO_X$	CO	Effective date
* *	*	*	*	* *
I–A	50		610	2001 Model Year.
I–B	40	37	610	2001 Model Year.

* * * * *

TABLE 4.—PHASE 2 HANDHELD EXHAUST EMISSION STANDARDS BY MODEL YEAR

[grams per kilowatt-hour]

Engine class	Emission requirement	Model year					
		2002	2003	2004	2005	2006	2007 and later
Class III	$HC+NO_X$	238	175	113	50	50	50
	CO	805	805	805	805	805	805
Class IV	$HC+NO_X$	196	148	99	50	50	50
	CO	805	805	805	805	805	805
Class V	$HC+NO_X$			143	119	96	72
	CO			603	603	603	603

* * * * *

(2) * * *

(v) Where a piece of equipment otherwise meeting the requirements of paragraph (a)(2)(iii) or (a)(2)(iv) of this section exceeds the applicable weight limit, emission standards for class III, IV or V, as applicable, may still apply if the equipment exceeds the weight limit by no more than the extent necessary to allow for the incremental weight of a four stroke engine or the incremental weight of a two stroke engine having enhanced emission control acceptable to the Administrator. Any manufacturer utilizing this provision to exceed the subject weight limitations shall maintain and make available to the Administrator upon request, documentation to substantiate that the exceedance of either weight limitation is a direct result of application of a four stroke or enhanced two stroke engine having the same, less or very similar power to two stroke engines that could otherwise be used to power the equipment and remain within the weight limitations.

* * * * *

(6) In lieu of certifying to the applicable Phase 2 standards, small volume engine manufacturers as defined in this part may, at their option, certify their engine families as Phase 1 engines until the 2010 model year for nonhandheld engine families excluding Class I–A and Class I–B engine families, until the 2008 model year for Class III and Class IV engine families, and until the 2010 model year for Class V engine families. * * * Beginning with the 2010 model year for nonhandheld engine families, the 2008 model year for Class III and Class IV engine families, and the 2010 model year for Class V engine families, these engines must meet the applicable Phase 2 standards.

(7) In lieu of certifying to the applicable Phase 2 standards, manufacturers of small volume engine families, as defined in this part may, at their option, certify their small volume engine families as Phase 1 engines until the 2010 model year for nonhandheld engine families excluding Class I–A and Class I–B engine families, until the 2008 model year for Class III and Class IV engine families, and until the 2010 model year for Class V engine families. * * * Beginning with the 2010 model year for nonhandheld engine families, the 2008 model year for Class III and Class IV engine families, and the 2010 model year for Class V engine families, these engines must meet the applicable Phase 2 standards.

* * * * *

5. Section 90.104 is amended by:

a. Revising paragraph (g)(1).

b. Removing the reference ''90.104(g)(3)'' in the last column of Table 1 of paragraph (g)(2) and adding the reference ''90.104(g)(4)'' in its place.

c. Redesignating paragraph (g)(3) as paragraph (g)(4).

d. Adding new paragraph (g)(3).

e. Revising the newly designated paragraph (g)(4).

f. Revising the introductory text of paragraph (h)(2).

The revisions and addition read as follows:

§ 90.104 Compliance with emission standards.

* * * * *

(g)(1) Small volume engine manufacturers and small volume engine families may, at their option, take deterioration factors for $HC+NO_X$ ($NMHC+NO_X$) and CO from Table 1 or Table 2 of this paragraph (g), or they may calculate deterioration factors for $HC+NO_X$ ($NMHC+NO_X$) and CO according to the process described in paragraph (h) of this section. For technologies that are not addressed in Table 1 or Table 2 of this paragraph (g), the manufacturer may ask the Administrator to assign a deterioration factor prior to the time of certification. The provisions of this paragraph (g) do not apply to Class I–A and Class I–B engines.

* * * * *

(3) Table 2 follows:

TABLE 2.—HANDHELD ENGINE $HC+NO_X$ AND CO ASSIGNED DETERIORATION FACTORS FOR SMALL VOLUME MANUFACTURERS AND SMALL VOLUME ENGINE FAMILIES

Engine class	Two-stroke engines[1]		Four-stroke engines		Engines with aftertreatment
	$HC+NO_X$	CO	$HC+NO_X$	CO	
Class III	1.1	1.1	1.5	1.1	Dfs must be calculated using the formula in § 90.104(g)(4).
Class IV	1.1	1.1	1.5	1.1	
Class V	1.1	1.1	1.5	1.1	

[1] Two-stroke technologies to which these assigned deterioration factors apply include conventional two-strokes, compression wave designs, and stratified scavenging designs.

(4) Formula for calculating deterioration factors for engines with aftertreatment:

$DF = [(NE * EDF) - (CC * F)]/(NE - CC)$

Where:

DF = deterioration factor.
NE = new engine emission levels prior to the catalyst (g/kW-hr)
EDF = deterioration factor for engines without catalyst as shown in Table 1 or Table 2 of this paragraph (g)
CC = amount converted at 0 hours in g/kW-hr.
F = 0.8 for HC (NMHC), 0.0 for NO_X, and 0.8 for CO for all classes of engines.

(h) * * *

(2) For engines not using assigned dfs from Table 1 or Table 2 of paragraph (g) of this section, dfs shall be determined as follows:

* * * * *

6. Section 90.105 is amended by adding a sentence to the end of paragraph (a)(1), by adding two entries in numerical order to Table 1 of paragraph (a)(2), and adding new paragraphs (a)(3) and (a)(4) to read as follows:

§ 90.105 Useful life periods for Phase 2 engines.

(a) * * *

(1) * * * Engines with gross power output greater than 19 kW that have an engine displacement less than or equal to one liter that optionally certify under this part as allowed in § 90.1(a), must certify to a useful life period of 1,000 hours.

(2) Table 1 follows:

TABLE 1: USEFUL LIFE CATEGORIES FOR NONHANDHELD ENGINES

[hours]

Class I–A	50	125	300
Class I–B	125	250	500

* * * * *

(3) For handheld engines: Manufacturers shall select a useful life category from Table 2 of this paragraph (a) at the time of certification.

(4) Table 2 follows:

TABLE 2: USEFUL LIFE CATEGORIES FOR HANDHELD ENGINES (HOURS)

Class III	50	125	300
Class IV	50	125	300
Class V	50	125	300

* * * * *

7. Section 90.107 is amended by removing the word ''and'' at the end of paragraph (d)(6)(iv), adding the word ''and'' at the end of paragraph (d)(6)(v), and adding a new paragraph (d)(6)(vi) to read as follows:

§ 90.107 Application for certification.

* * * * *

(d) * * *

(6) * * *

(vi) Information relating to altitude kits to be certified, including: a description of the altitude kit; appropriate part numbers; the altitude ranges at which the kits must be installed on or removed from the engine for proper emissions and engine performance; statements to be included in the owner's manual for the engine/equipment combination (and other maintenance related literature) that: declare the altitude ranges at which the kit must be installed or removed; and state that the operation of the engine/equipment at an altitude that differs from that at which it was certified, for extended periods of time, may increase emissions; and a statement that an engine with the altitude kit installed will meet each emission standard throughout its useful life (the rationale for this assessment must be documented and retained by the manufacturer, and provided to the Administrator upon request);

* * * * *

8. Section 90.114 is amended by revising paragraph (f)(1), by adding a new paragraph (f)(2), and by revising paragraph (f)(3) to read as follows:

§ 90.114 Requirement of certification—engine information label.

* * * * *

(f) * * *

(1) For nonhandheld engines: The Emissions Compliance Period referred to on the Emissions Compliance label indicates the number of operating hours for which the engine has been shown to meet Federal emission requirements. For engines less than 66 cc, Category C=50 hours, B=125 hours, and A=300 hours. For engines equal to or greater than 66 cc but less than 225 cc displacement, Category C=125 hours, B=250 hours, and A=500 hours. For engines of 225 cc or more, Category C=250 hours, B=500 hours, and A=1000 hours.

(2) For handheld engines: The Emissions Compliance Period referred to on the Emissions Compliance label indicates the number of operating hours for which the engine has been shown to meet Federal emission requirements. Category C=50 hours, B=125 hours, and A=300 hours.

(3) The manufacturer must provide, in the same document as the statement in paragraph (f)(1) or (f)(2) of this section, a statement of the engine's displacement or an explanation of how to readily determine the engine's displacement. The Administrator may approve alternate language to the statement in paragraph (f)(1) or (f)(2) of this section,

provided that the alternate language provides the ultimate purchaser with a clear description of the number of hours represented by each of the three letter categories for the subject engine's displacement.

9. Section 90.116 is amended by redesignating paragraphs (b)(1) through (b)(5) as paragraphs (b)(3) through (b)(7), respectively, and by adding new paragraphs (b)(1) and (b)(2), and revising newly designated paragraphs (b)(3) and (b)(4) to read as follows:

§ 90.116 Certification procedure—determining engine displacement, engine class, and engine families.

* * * * *

(b)* * *

(1) Class I–A—nonhandheld equipment engines less than 66 cc in displacement;

(2) Class I–B—nonhandheld equipment engines greater than or equal to 66 cc but less than 100 cc in displacement;

(3) Class I—nonhandheld equipment engines greater than or equal to 100 cc but less than 225 cc in displacement;

(4) Class II—nonhandheld equipment engines greater than or equal to 225 cc in displacement;

* * * * *

10. Section 90.119 is amended by revising paragraphs (a)(1)(i) and (a)(1)(ii) to read as follows:

§ 90.119 Certification procedure—testing.

(a) * * *

(1) * * *

(i) Class I, I–B, and II engines must use Test Cycle A described in Subpart E of this part, except that Class I, I–B, and II engine families in which 100 percent of the engines sold operate only at rated speed may use Test Cycle B described in Subpart E of this part.

(ii) Class I–A, III, IV, and V engines must use Test Cycle C described in Subpart E of this part.

* * * * *

Subpart C—Certification Averaging, Banking, and Trading Provisions

11. Section 90.203 is amended by revising paragraphs (e)(1), (e)(3), (e)(5), paragraph (f), paragraph (g)(1), and the second sentence of paragraph (h) to read as follows:

§ 90.203 General provisions.

* * * * *

(e)(1) A manufacturer may certify engine families at Family Emission Limits (FELs) above or below the applicable emission standard subject to the limitation in paragraph (f) of this section, provided the summation of the manufacturer's projected balance of credits from all credit transactions for all engine classes in a given model year is greater than or equal to zero, as determined under § 90.207 or § 90.216, as applicable.

* * * * *

(3) A nonhandheld engine family with an FEL below the applicable emission standard may generate positive emission credits for averaging, banking, or trading, or a combination thereof. A handheld engine family with an FEL below the applicable emission standard may generate positive emission credits for averaging or trading. A handheld engine family meeting the requirements of § 90.205(a)(4) or (5), whichever is applicable, may generate positive emission credits for banking.

* * * * *

(5) In the case of a production line testing (PLT) failure pursuant to subpart H of this part, a manufacturer may revise the FEL based upon production line testing results obtained under subpart H of this part and upon Administrator approval pursuant to § 90.122(d). The manufacturer may use credits to cover both past production and subsequent production of the engines as needed as allowed under § 90.207(c) or § 90.216(c), as applicable.

(f) No Phase 2 engine family may have a HC + NO_X FEL that is greater than 32.2 g/kW-hr for Class I engines, 94 g/kW-hr for Class I–A engines, 50 g/kW-hr for Class I–B engines, 26.8 g/kW-hr for Class II engines, 336 g/kW-hr for Class III engines, 275 g/kW-hr for Class IV engines, or 186 g/kW-hr for Class V engines.

(g)(1) Credits generated in a given model year by an engine family subject to the Phase 2 emission requirements may only be used in averaging, banking or trading, as appropriate, for any other engine family for which the Phase 2 requirements are applicable. Credits generated in one model year may not be used for prior model years, except as allowed under § 90.207(c) or § 90.216(c), as applicable.

* * * * *

(h) * * * Except as provided in § 90.207(c) or § 90.216(c), as applicable, an engine family generating negative credits for which the manufacturer does not obtain or generate an adequate number of positive credits by that date from the same or previous model year engines will violate the conditions of the certificate of conformity. * * *

* * * * *

12. Section 90.204 is amended by removing the word ''nonhandheld'' in paragraph (b) and revising paragraph (c) to read as follows:

§ 90.204 Averaging.

* * * * *

(c) Credits used in averaging for a given model year may be obtained from credits generated in the same model year by another engine family, credits banked in previous model years, or credits of the same or previous model year obtained through trading subject to the provisions of § 90.205(a). The restrictions of this paragraph notwithstanding, credits from a given model year may be used to address credit needs of previous model year engines as allowed under § 90.207(c).

* * * * *

13. Section 90.205 is amended by adding new paragraphs (a)(2), (a)(4), (a)(5) and (b)(3), (b)(4), and (b)(5) to read as follows:

§ 90.205 Banking.

(a) * * *

(2) Beginning with the 2000 model year, a manufacturer of a Class I–A or Class I–B engine family with an FEL below the applicable emission standard for a given model year may bank credits in that model year for use in averaging and trading.

* * * * *

(4) For the 2002 through 2004 model years, a manufacturer of a Class III or Class IV engine family may bank credits for use in future model year averaging and trading from only those Class III or Class IV engine families with an FEL at or below 72 g/kW-hr. Beginning with the 2005 model year, a manufacturer of a Class III or Class IV engine family with an FEL below the applicable emission standard may generate credits for use in future model year averaging and trading.

(5) For the 2004 through 2006 model years, a manufacturer of a Class V engine family may bank credits for use in future model year averaging and trading from only those Class V engine families with an FEL at or below 87 g/kW-hr. Beginning with the 2007 model year, a manufacturer of a Class V engine family with an FEL below the applicable emission standard may generate credits for use in future model year averaging and trading.

* * * * *

(b) * * *

(3) Beginning with the 2000 model year and prior to the applicable date listed in paragraph (a) of this section for Class III engines, a manufacturer may bank early credits for all Class III engines with HC+NO_X FELs below 72 g/kW-hr. All early credits for Class III engines shall be calculated against a HC+NO_X level of 238 g/kW-hr.

(4) Beginning with the 2000 model year and prior to the applicable date

listed in paragraph (a) of this section for Class IV engines, a manufacturer may bank early credits for all Class IV engines with $HC+NO_X$ FELs below 72 g/kW-hr. All early credits for Class IV engines shall be calculated against a $HC+NO_X$ level of 196 g/kW-hr.

(5) Beginning with the 2000 model year and prior to the applicable date listed in paragraph (a) of this section for Class V engines, a manufacturer may bank early credits for all Class V engines with $HC+NO_X$ FELs below 87 g/kW-hr. All early credits for Class V engines shall be calculated against a $HC+NO_X$ level of 143 g/kW-hr.

* * * * *

14. Section 90.206 is amended by revising paragraph (c) to read as follows:

§ 90.206 Trading.

* * * * *

(c) Traded credits can be used for averaging, banking, or further trading transactions, subject to the provisions of § 90.205(a).

* * * * *

15. Section 90.207 is amended in paragraph (a) by revising the first sentence in the definition of ''Load factor'' following the equation to read as follows:

§ 90.207 Credit calculation and manufacturer compliance with emission standards.

(a) * * *

Load Factor = 47 percent (i.e., 0.47) for Test Cycle A and Test Cycle B, and 85 percent (i.e., 0.85) for Test Cycle C. * * *

* * * * *

16. New §§ 90.212 through 90.220 are added to subpart C to read as follows:

§ 90.212 Optional transition year averaging, banking, and trading program for Phase 2 handheld engines.

(a) In lieu of the averaging, banking, and trading program described in §§ 90.204 through 90.211, a handheld engine manufacturer may, through model year 2010, participate in an optional transition year averaging, banking and trading program as described in §§ 90.213 through 90.220.

(b) Under this optional transition year program, if an engine family has an FEL below the applicable standard for that year, it can generate emission credits as calculated in § 90.216. These credits will be determined by subtracting the engine family's FEL from the standard and multiplying by the appropriate adjustment factor selected from Tables 1 through 3 in § 90.216. These credits will be designated as ''Optional Transition Year'' credits. These credits, as adjusted by these factors, may be used in subsequent model years through model year 2007 to demonstrate manufacturer compliance with the applicable standard. Beginning in model year 2008 and continuing through model year 2010, these optional transition credits can be used to demonstrate compliance if, prior to the use of any credits, the manufacturer's average emission level as calculated using the FELs set by the manufacturer is equal to or lower than the manufacturer's average emission level using the manufacturer's actual production, but substituting values of 72 g/kW-hr for Class III and IV engines, and 87 g/kW-hr for Class V engines. Manufacturer will choose to participate in this optional transition year program each year and for each engine family. Manufacturers will notify EPA of their program choice at the time they request certification. Once a family has been designated as generating credits under either the optional program or the program described in §§ 90.204 through 90.211, the manufacturer may not change that program selection for any of the engines of that engine family produced under that model year certification approval.

§ 90.213 Averaging under the optional program.

(a) Negative credits from engine families with FELs above the applicable emission standard must be offset by positive credits from engine families having FELs below the applicable emission standard, as allowed under the provisions of this subpart. Averaging of credits in this manner is used to determine compliance under § 90.216(b).

(b) Cross-class averaging of credits is allowed across all classes of nonroad spark-ignition handheld engines at or below 19 kW participating in the optional transition year program.

(c) Credits used in averaging for a given model year may be obtained from credits generated in the same model year by another engine family, credits banked in previous model years, or credits of the same or previous model year obtained through trading. The restrictions of this paragraph (c) notwithstanding, credits from a given model year may be used to address credit needs of previous model year engines as allowed under § 90.216(c).

(d) The use of credits generated under the early banking provisions of § 90.214(b) is subject to regulations under this subpart.

§ 90.214 Banking under the optional program.

(a)(1) [Reserved]

(2) [Reserved]

(3) [Reserved]

(4) For the 2002 through 2004 model years, a manufacturer of a Class III or Class IV engine family may bank credits for use in future model year averaging and trading from those Class III or Class IV engine families with an FEL at or below the applicable standard.

(5) For the 2004 through 2006 model years, a manufacturer of a Class V engine family may bank credits for use in future model year averaging and trading from those Class V engine families with an FEL at or below the applicable standard.

(6) Negative credits may be banked only according to the requirements under § 90.216(c).

(b)(1) [Reserved]

(2) [Reserved]

(3) Beginning with the 2000 model year and prior to the applicable date listed in paragraph (a) of this section for Class III engines, a manufacturer may bank early credits for all Class III engines with $HC+NO_X$ FELs below the applicable standard. All early credits for Class III engines shall be calculated against a $HC+NO_X$ level of 238 g/kW-hr.

(4) Beginning with the 2000 model year and prior to the applicable date listed in paragraph (a) of this section for Class IV engines, a manufacturer may bank early credits for all Class IV engines with $HC+NO_X$ FELs below the applicable standard. All early credits for Class IV engines shall be calculated against a $HC+NO_X$ level of 196 g/kW-hr.

(5) Beginning with the 2000 model year and prior to the applicable date listed in paragraph (a) of this section for Class V engines, a manufacturer may bank early credits for all Class V engines with $HC+NO_X$ FELs below the applicable standard. All early credits for Class V engines shall be calculated against a $HC+NO_X$ level of 143 g/kW-hr.

(6) Engines certified under the early banking provisions of this paragraph are subject to all of the requirements of this part applicable to Phase 2 engines.

(c) A manufacturer may bank actual credits only after the end of the model year and after EPA has reviewed the manufacturer's end-of-year reports. During the model year and before submittal of the end-of-year report, credits originally designated in the certification process for banking will be considered reserved and may be redesignated for trading or averaging in the end-of-year report and final report.

(d) Credits declared for banking from the previous model year that have not been reviewed by EPA may be used in averaging or trading transactions. However, such credits may be revoked at a later time following EPA review of

the end-of-year report or any subsequent audit actions.

§ 90.215 Trading under the optional program.

(a) An engine manufacturer may exchange emission credits with other engine manufacturers in trading.

(b) Credits for trading can be obtained from credits banked in previous model years or credits generated during the model year of the trading transaction.

(c) Traded credits can be used for averaging, banking, or further trading transactions.

(d) Traded credits are subject to the limitations on use for past model years, as set forth in § 90.213(c).

(e) In the event of a negative credit balance resulting from a transaction, both the buyer and the seller are liable, except in cases involving fraud. Certificates of all engine families participating in a negative trade may be voided ab initio pursuant to § 90.123.

§ 90.216 Credit calculation and manufacturer compliance with emission standards under the optional program.

(a)(1) For each engine family, $HC+NO_X$ [$NMHC+NO_X$] certification emission credits (positive or negative) are to be calculated according to the following equation and rounded to the nearest gram. Consistent units are to be used throughout the following equation:

Credits = Production × (Standard − FEL) × Power × Useful life × Load Factor × Adjustment Factor

Where:

Production = eligible production as defined in this part. Annual production projections are used to project credit availability for initial certification. Eligible production volume is used in determining actual credits for end-of-year compliance determination.

Standard = the current and applicable Small SI engine $HC+NO_X$ ($NMHC+NO_X$) emission standard in grams per kilowatt hour as determined in § 90.103 or, for early credits, the applicable emission level as specified in § 90.214(b).

FEL = the family emission limit for the engine family in grams per kilowatt hour.

Power = the maximum modal power of the certification test engine, in kilowatts, as calculated from the applicable federal test procedure as described in this part.

Useful Life = the useful life in hours corresponding to the useful life category for which the engine family was certified.

Load Factor = 85 percent (i.e., 0.85) for Test Cycle C. For approved alternate test procedures, the load factor must be calculated according to the formula in paragraph (a)(2) of this section:

Adjustment Factor = 1.0, except for purposes of calculating credits for banking under the optional transition year program, in which case the adjustment factor is listed in Table 1, Table 2, or Table 3 of paragraph (a)(3) of this section, whichever is applicable, based on the model year of the engine and its certified FEL.

(2) Use the following formula to calculate the load factor in paragraph (a)(1) of this section:

$$\sum_{i=1}^{n}\left(\%\text{MTT mode}_i\right)\times\left(\%\text{MTS mode}_i\right)\times\left(\text{WF mode}_i\right)$$

Where:

$\%MTT\ mode_i$ = percent of the maximum FTP torque for mode i.

$\%MTS\ mode_i$ = percent of the maximum FTP engine rotational speed for mode i.

$WF\ mode_i$ = the weighting factor for mode i.

(3) Tables 1, 2, and 3 follow:

TABLE 1.—ADJUSTMENT FACTORS FOR CLASS III ENGINES

Model year 2002 or earlier engine families with FELs:	Model year 2003 engine families with FELs:	Model year 2004 engine families with FELs:	Adjustment factor
>113 g/kW-hr	>87 g/kW-hr		0.25
>87–113 g/kW-hr	>72–87 g/kW-hr	>72–87 g/kW-hr	0.50
>72–87 g/kW-hr	>50–72 g/kW-hr	≤72 g/kW-hr	1.00
≤72 g/kW-hr	≤50 g/kW-hr		1.25

TABLE 2.—ADJUSTMENT FACTORS FOR CLASS IV ENGINES

Model year 2002 or earlier engine families with FELs:	Model year 2003 engine families with FELs:	Model year 2004 engine families with FELs:	Adjustment factor
>99 g/kW-hr	>87 g/kW-hr		0.25
>87–99 g/kW-hr	>72–87 g/kW-hr	>72–87 g/kW-hr	0.50
>72–87 g/kW-hr	>50–72 g/kW-hr	≤72 g/kW-hr	1.00
≤72 g/kW-hr	≤50 g/kW-hr		1.25

TABLE 3.—ADJUSTMENT FACTORS FOR CLASS V ENGINES

Model year 2004 or earlier engine families with FELs:	Model year 2005 engine families with FELs:	Model year 2006 engine families with FELs:	Adjustment factor
>96 g/kW-hr			0.25
>87–96 g/kW-hr	>87 g/kW-hr	>72–87 g/kW-hr	0.50
>72–87 g/kW-hr	>72–87 g/kW-hr	≤72 g/kW-hr	1.00
≤72 g/kW-hr	≤72 g/kW-hr		1.25

(b) Manufacturer compliance with the emission standards is determined on a corporate average basis at the end of each model year. A manufacturer is in compliance when the sum of positive and negative emission credits it holds is greater than or equal to zero, except that the sum of positive and negative credits may be less than zero as allowed under paragraph (c) of this section.

(c) If, as a result of production line testing as required in subpart H of this part, an engine family is determined to be in noncompliance pursuant to § 90.710, the manufacturer may raise its FEL for past and future production as necessary. Further, a manufacturer may carry a negative credit balance (known also as a credit deficit) for the subject class and model year and for the next three model years. The credit deficit may be no larger than that created by the nonconforming family. If the credit deficit still exists after the model year following the model year in which the nonconformity occurred, the manufacturer must obtain and apply credits to offset the remaining credit deficit at a rate of 1.2 grams for each gram of deficit within the next two model years. The provisions of this paragraph (c) are subject to the limitations in paragraph (d) of this section.

(d) Regulations elsewhere in this part notwithstanding, if an engine manufacturer experiences two or more production line testing failures pursuant to the regulations in subpart H of this part in a given model year, the manufacturer may raise the FEL of previously produced engines only to the extent that such engines represent no more than 10 percent of the manufacturer's total eligible production for that model year, as determined on the date when the FEL is adjusted. For any additional engine families determined to be in noncompliance, the manufacturer must conduct offsetting projects approved in advance by the Administrator.

(e) If, as a result of production line testing under this subpart, a manufacturer desires to lower its FEL it may do so subject to § 90.708(c).

(f) Except as allowed at paragraph (c) of this section, when a manufacturer is not in compliance with the applicable emission standard by the date 270 days after the end of the model year, considering all credit calculations and transactions completed by then, the manufacturer will be in violation of these regulations and EPA may, pursuant to § 90.123, void ab initio the certificates of engine families for which the manufacturer has not obtained sufficient positive emission credits.

§ 90.217 Certification under the optional program.

(a) In the application for certification a manufacturer must:

(1) Submit a statement that the engines for which certification is requested will not, to the best of the manufacturer's belief, cause the manufacturer to be in noncompliance under § 90.216(b) when all credits are calculated for the manufacturer's engine families.

(2) Declare an FEL for each engine family for $HC+NO_X$ ($NMHC+NO_X$). The FEL must have the same number of significant digits as the emission standard.

(3) Indicate the projected number of credits generated/needed for this family; the projected applicable eligible annual production volume, and the values required to calculate credits as given in § 90.216.

(4) Submit calculations in accordance with § 90.216 of projected emission credits (positive or negative) based on annual production projections for each family.

(5)(i) If the engine family is projected to have negative emission credits, state specifically the source (manufacturer/engine family or reserved) of the credits necessary to offset the credit deficit according to projected annual production.

(ii) If the engine family is projected to generate credits, state specifically (manufacturer/engine family or reserved) where the projected annual credits will be applied.

(iii) The manufacturer may supply the information required by this section in the form of a spreadsheet detailing the manufacturer's annual production plans and the credits generated or consumed by each engine family.

(b) All certificates issued are conditional upon manufacturer compliance with the provisions of this subpart both during and after the model year of production.

(c) Failure to comply with all provisions of this subpart will be considered to be a failure to satisfy the conditions upon which the certificate was issued, and the certificate may be determined to be void ab initio pursuant to § 90.123.

(d) The manufacturer bears the burden of establishing to the satisfaction of the Administrator that the conditions upon which the certificate was issued were satisfied or waived.

(e) Projected credits based on information supplied in the certification application may be used to obtain a certificate of conformity. However, any such credits may be revoked based on review of end-of-year reports, follow-up audits, and any other verification steps considered appropriate by the Administrator.

§ 90.218 Maintenance of records under the optional program.

(a) The manufacturer must establish, maintain, and retain the following adequately organized and indexed records for each engine family:

(1) EPA engine family identification code;

(2) Family Emission Limit (FEL) or FELs where FEL changes have been implemented during the model year;

(3) Maximum modal power for the certification test engine;

(4) Projected production volume for the model year; and

(5) Records appropriate to establish the quantities of engines that constitute eligible production as defined in § 90.3 for each FEL.

(b) Any manufacturer producing an engine family participating in trading reserved credits must maintain the following records on an annual basis for each such engine family:

(1) The engine family;

(2) The actual applicable production volume;

(3) The values required to calculate credits as given in § 90.216;

(4) The resulting type and number of credits generated/required;

(5) How and where credit surpluses are dispersed; and

(6) How and through what means credit deficits are met.

(c) The manufacturer must retain all records required to be maintained under this section for a period of eight years from the due date for the end-of-model year report. Records may be retained as hard copy or reduced to microfilm, ADP diskettes, and so forth, depending on the manufacturer's record retention procedure; provided, that in every case all information contained in the hard copy is retained.

(d) Nothing in this section limits the Administrator's discretion in requiring the manufacturer to retain additional records, or submit information not specifically required by this section, if otherwise permitted by law.

(e) Pursuant to a request made by the Administrator, the manufacturer must submit to the Administrator the information that the manufacturer is required to retain.

(f) EPA may, pursuant to § 90.123, void ab initio a certificate of conformity for an engine family for which the manufacturer fails to retain the records required in this section or to provide such information to the Administrator upon request.

§ 90.219 End-of-year and final reports under the optional program.

(a) End-of-year and final reports must indicate the engine family, the engine class, the actual production volume, the values required to calculate credits as given in § 90.216, and the number of credits generated/required. Manufacturers must also submit how and where credit surpluses were dispersed (or are to be banked) and/or how and through what means credit deficits were met. Copies of contracts related to credit trading must be included or supplied by the broker, if applicable. The report must include a calculation of credit balances to show that the credit summation for all engines is equal to or greater than zero (or less than zero in cases of negative credit balances as permitted in § 90.216(c)). For model years 2008 through 2010, the report must include a calculation of the production weighted average $HC+NO_X$ FEL for handheld engine families to show compliance with the provisions of § 90.212(b).

(b) The calculation of eligible production for end-of-year and final reports must be based on engines produced for the United States market, excluding engines which are subject to state emission standards pursuant to a waiver granted by EPA under section 209(e) of the Act. Upon advance written request, the Administrator will consider other methods to track engines for credit calculation purposes that provide high levels of confidence that eligible production or sales are accurately counted.

(c)(1) End-of-year reports must be submitted within 90 days of the end of the model year to: Manager, Engine Compliance Programs Group (6403–J), U.S. Environmental Protection Agency, Washington, DC 20460.

(2) Unless otherwise approved by the Administrator, final reports must be submitted within 270 days of the end of the model year to: Manager, Engine Compliance Programs Group (6403–J), U.S. Environmental Protection Agency, Washington, DC 20460.

(d) Failure by a manufacturer to submit any end-of-year or final reports in the specified time for any engines subject to regulation under this part is a violation of § 90.1003(a)(2) and section 213(d) of the Clean Air Act for each engine.

(e) A manufacturer generating credits for banking only who fails to submit end-of-year reports in the applicable specified time period (90 days after the end of the model year) may not use the credits until such reports are received and reviewed by EPA. Use of projected credits pending EPA review is not permitted in these circumstances.

(f) Errors discovered by EPA or the manufacturer in the end-of-year report, including errors in credit calculation, may be corrected in the final report.

(g) If EPA or the manufacturer determines that a reporting error occurred on an end-of-year or final report previously submitted to EPA under this section, the manufacturer's credits and credit calculations must be recalculated. Erroneous positive credits will be void except as provided in paragraph (h) of this section. Erroneous negative credit balances may be adjusted by EPA.

(h) If EPA review determines a reporting error in the manufacturer's favor (that is, resulting in an increased credit balance) or if the manufacturer discovers such an error within 270 days of the end of the model year, EPA shall restore the credits for use by the manufacturer.

§ 90.220 Request for hearing.

An engine manufacturer may request a hearing on the Administrator's voiding of the certificate under §§ 90.203(h), 90.215(e), 90.216(f), 90.217(c), or 90.218(f), pursuant to § 90.124. The procedures of § 90.125 shall apply to any such hearing.

Subpart D—Emission Test Equipment Provisions

16. Section 90.301 is amended by revising the first and second sentences of paragraph (d) to read as follows:

§ 90.301 Applicability.

* * * * *

(d) For Phase 2 Class I, Phase 2 Class I-B, and Phase 2 Class II natural gas fueled engines, the following sections from 40 CFR Part 86 are applicable to this subpart. The requirements of the following sections from 40 CFR Part 86 which pertain specifically to the measurement and calculation of non-methane hydrocarbon (NMHC) exhaust emissions from otto cycle heavy-duty engines must be followed when determining the NMHC exhaust emissions from Phase 2 Class I, Phase 2 Class I–B, and Phase 2 Class II natural gas fueled engines. * * *

Subpart E—Gaseous Exhaust Test Procedures

17. Section 90.401 is amended by revising the first and second sentences of paragraph (d) to read as follows:

§ 90.401 Applicability.

* * * * *

(d) For Phase 2 Class I, Phase 2 Class I–B, and Phase 2 Class II natural gas fueled engines, the following sections from 40 CFR Part 86 are applicable to this subpart. The requirements of the following sections from 40 CFR Part 86 which pertain specifically to the measurement and calculation of non-methane hydrocarbon (NMHC) exhaust emissions from otto cycle heavy-duty engines must be followed when determining the NMHC exhaust emissions from Phase 2 Class I, Phase 2 Class I–B, and Phase 2 Class II natural gas fueled engines. * * *

18. Section 90.404 is amended by revising paragraph (b) to read as follows:

§ 90.404 Test procedure overview.

* * * * *

(b) The test is designed to determine the brake-specific emissions of hydrocarbons, carbon monoxide, carbon dioxide, and oxides of nitrogen and fuel consumption. For Phase 2 Class I–B, Class I, and Class II natural gas fueled engines the test is also designed to determine the brake-specific emissions of non-methane hydrocarbons. The test consists of three different test cycles which are application specific for engines which span the typical operating range of nonroad spark-ignition engines. Two cycles exist for Class I–B, I and II engines and one is for Class I–A, III, IV, and V engines (see § 90.103(a) and § 90.116(b) for the definitions of Class I–A, I–B, and I—V engines). The test cycles for Class I–B, I, and II engines consist of one idle mode and five power modes at one speed (rated or intermediate). The test cycle for Class I–A, III, IV, and V engines consists of one idle mode at idle speed and one power mode at rated speed. These procedures require the determination of the concentration of each pollutant, fuel flow, and the power output during each mode. The measured values are weighted and used to calculate the grams of each pollutant emitted per brake kilowatt hour (g/kW-hr).

* * * * *

19. Section 90.408 is amended by designating the text in paragraph (b)(2) preceding the table as paragraph (b)(2)(i), designating the text following the table as paragraph (b)(2)(ii), and revising the table in newly designated paragraph (b)(2)(i) to read as follows:

§ 90.408 Pre-test procedures.

* * * * *

(b) * * *

(2)(i) * * *

Engine class	Test cycle	Operating mode
(A) I, I–B, II	A	6
(B) I, I–B, II	B	1
(C) I–A, III, IV, V	C	1

* * * * *

20. Section 90.409 is amended by revising the last sentence of paragraph (a)(3) and by revising paragraph (b)(6) to read as follows:

§ 90.409 Engine dynamometer test run.

(a) * * *

(3) * * * For Phase 2 Class I, Phase 2 Class I–B, and Phase 2 Class II engines equipped with an engine speed governor, the governor must be used to control engine speed during all test cycle modes except for Mode 1 or Mode 6, and no external throttle control may be used that interferes with the function of the engine's governor; a controller may be used to adjust the governor setting for the desired engine speed in Modes 2–5 or Modes 7–10; and during Mode 1 or Mode 6 fixed throttle operation may be used to determine the 100 percent torque value.

(b) * * *

(6) For Class I, I–B, and II engines, during the maximum torque mode calculate the torque corresponding to 75, 50, 25, and 10 percent of the maximum observed torque (see Table 2 in Appendix A to this subpart).

* * * * *

21. Section 90.410 is amended by revising paragraph (a), the first and third sentences of paragraph (b), and the first sentence of paragraph (c) to read as follows:

§ 90.410 Engine test cycle.

(a) Follow the appropriate 6-mode test cycle for Class I, I–B and II engines and 2-mode test cycle for Class I–A, III, IV, and V engines when testing spark-ignition engines (see Table 2 in Appendix A of this subpart).

(b) For Phase 1 engines and Phase 2 Class I–A, III, IV, and V, and Phase 2 Class I and II engines not equipped with an engine speed governor, during each non-idle mode, hold both the specified speed and load within ± five percent of point. * * * For Phase 2 Class I, I–B, and II engines equipped with an engine speed governor, during Mode 1 or Mode 6 hold both the specified speed and load within ± five percent of point, during Modes 2–3, or Modes 7–8 hold the specified load with ± five percent of point, during Modes 4–5 or Modes 9–10, hold the specified load within the larger range provided by +/− 0.27 Nm (+/− 0.2 lb-ft), or +/− ten (10) percent of point, and during the idle mode hold the specified speed within ± ten percent of the manufacturer's specified idle engine speed (see Table 1 in Appendix A of this subpart for a description of test Modes). * * *

(c) If the operating conditions specified in paragraph (b) of this section for Class I, I–B, and II engines using Mode Points 2, 3, 4, and 5 cannot be maintained, the Administrator may authorize deviations from the specified load conditions. * * *

* * * * *

22. Appendix A to Subpart E of Part 90 is amended in Table 2 by revising the table heading, removing the last entry and adding two new entries in its place to read as follows:

Apendix A to Subpart E of Part 90 —Tables

* * * * *

TABLE 2.—TEST CYCLES FOR CLASS I–A, I–B, AND CLASS I–V ENGINES

Mode	Rated Speed					Intermediate Speed				Idle	
	1	2	3	4	5	6	7	8	9	10	11
* * *	*			*			*			*	
Weighting for Phase 1 Engines	90%	.....	.....	.....	.....	.....	.....	.....	.....	.....	10%
Weighting for Phase 2 Engines	85%	.....	.....	.....	.....	.....	.....	.....	.....	.....	15%

Subpart H—Manufacturer Production Line Testing Program

23. Section 90.701 is amended by adding the words ''handheld and'' immediately preceding the word ''nonhandheld'' in paragraph (a).

Subpart K—Prohibited Acts and General Enforcement Provisions

24. Section 90.1003 is amended by adding paragraph (b)(5)(v), by revising the first sentence of paragraph (b)(6)(i) and adding a new sentence to the end of paragraph (b)(6)(i), by revising the first two sentences of paragraph (b)(6)(ii) and adding a new sentence to the end of paragraph (b)(6)(ii), by revising paragraph (b)(6)(iii) introductory text, and by adding a new paragraph (b)(7) to read as follows:

§ 90.1003 Prohibited acts.

* * * * *

(b) * * *

(5) * * *

(v) In cases where an engine is to be imported for replacement purposes under the provisions of this paragraph (b)(5), the term ''engine manufacturer'' shall not apply to an individual or other entity that does not possess a current Certificate of Conformity issued by EPA under this part.

(6)(i) Regulations elsewhere in this part notwithstanding, for three model years after the phase-in of each set of Class I through Class V Phase 2 standards; i.e. up to and including August 1, 2010 for Class I engines, up to and including model year 2008 for Class II engines, up to and including model year 2008 for Class III and Class IV engines, and up to and including model year 2010 for Class V engines, small volume equipment manufacturers as defined in this part, may continue to use, and engine manufacturers may continue to supply, engines certified to Phase 1 standards (or identified and labeled by their manufacturer to be identical to engines previously certified under Phase 1 standards), provided the equipment manufacturer has demonstrated to the satisfaction of the Administrator that no certified Phase 2 engine is available with suitable physical or performance characteristics to power a piece of equipment in production prior to the initial effective date of Phase 2 standards, as indicated in § 90.103(a). * * * These provisions do not apply to Class I–A and Class I–B engines.

(ii) Regulations elsewhere in this part notwithstanding, for the duration of the Phase 2 rule in this part, equipment manufacturers that produce small volume equipment models, as defined in this part, for a Class I model in production prior to August 1, 2007, or a Class II model in production prior to the 2001 model year, or a Class III or Class IV model in production prior to the 2002 model year, or a Class V model in production prior to the 2004 model year, may continue to use in that small volume equipment model, and engine

manufacturers may continue to supply, engines certified to Phase 1 requirements (or identified and labeled by their manufacturer to be identical to engines previously certified under Phase 1 standards). To be eligible for this provision, the equipment manufacturer must have demonstrated to the satisfaction of the Administrator that no certified Phase 2 engine is available with suitable physical or performance characteristics to power the small volume equipment model. * * * These provisions do not apply to Class I–A and Class I–B engines.

(iii) An equipment manufacturer which is unable to obtain suitable Phase 2 engines and which can not obtain relief under any other provision of this part, may, prior to the date on which the manufacturer would become in noncompliance with the requirement to use Phase 2 engines, apply to the Administrator to be allowed to continue using Phase 1 engines, through August 1, 2008 for Class I engines, through the 2006 model year for Class II engines, through the 2006 model year for Class III and Class IV engines, and through the 2008 model year for Class V engines, subject to the following criteria (These provisions do not apply to Class I–A and Class I–B engines.):

* * * * *

(7) Actions for the purpose of installing or removing altitude kits and performing other changes to compensate for altitude change as described in the application for certification pursuant to § 90.107(d) and approved at the time of certification pursuant to § 90.108(a) are not considered prohibited acts under paragraph (a) of this section.

Subpart L—Emission Warranty and Maintenance Instructions

25. Section 90.1103 is amended by adding four sentences to the end of paragraph (a) to read as follows:

§ 90.1103 Emission warranty, warranty period.

(a) * * * Manufacturers of handheld engines subject to Phase 2 standards may apply to the Administrator for approval for a warranty period of less than two years for handheld engines that are subject to severe service in seasonal equipment and are likely to run their full useful life hours in less than two years. Such an application must be made prior to certification. Alternatively, manufacturers of handheld engines subject to Phase 2 standards may apply to the Administrator for approval for a warranty period equal to the useful life of the engine or two years, whichever is less, if the equipment in which the engine is placed is equipped with a meter for measuring hours of use. Such an application must be made prior to certification.

* * * * *

Subpart M—Voluntary In-Use Testing

26. Section 90.1201 is amended by adding the words ''handheld and'' immediately preceding the word ''nonhandheld''.

PART 91—CONTROL OF EMISSIONS FROM MARINE SPARK-IGNITION ENGINES

27. The authority citation for part 91 is revised to read as follows:

Authority: 42 U.S.C. 7521, 7522, 7523, 7524, 7525, 7541, 7542, 7543, 7547, 7549, 7550, and 7601(a).

Subpart C—Averaging, Banking, and Trading Provisions

28. Section 91.207 is amended by adding paragraph (e) to read as follows:

§ 91.207 Credit calculation and manufacturer compliance with emission standards.

* * * * *

(e) Notwithstanding other provisions of this part, for model years beginning with model year 2000, a manufacturer having a negative credit balance during one period of up to four consecutive model years will not be considered to be in noncompliance in a model year up through and including model year 2009 where:

(1) The manufacturer has a total annual production of engines subject to regulation under this part of 1000 or less; and

(2) The manufacturer has not had a negative credit balance other than in three immediately preceding model years, except as permitted under paragraph (c) of this section; and

(3) The FEL(s) of the family or families produced by the manufacturer are no higher than those of the corresponding family or families in the previous model year, except as allowed by the Administrator; and

(4) The manufacturer submits a plan acceptable to the Administrator for coming into compliance with future model year standards including projected dates for the introduction or increased sales of engine families having FEL(s) below standard and projected dates for discontinuing or reducing sales of engines having FEL(s) above standard; and

(5)(i) The manufacturer has set its FEL using emission testing as prescribed in subpart E of this part; or

(ii) The manufacturer has set its FEL based on the equation and provisions of § 91.118(h)(1)(i) and the manufacturer has submitted appropriate test data and revised its FEL(s) and recalculated its credits pursuant to the provisions of § 91.118(h)(1); or

(iii) The manufacturer has set its FEL using good engineering judgement, pursuant to the provisions of § 91.118(h)(1)(ii) and (h)(2).

Subpart L—Prohibited Acts and General Enforcement Provisions

29. Section 91.1103 is amended by removing the period at the end of paragraph (b)(4)(iv) and adding ''; and'' in its place and adding paragraph (b)(4)(v) to read as follows:

§ 91.1103 Prohibited acts.

* * * * *

(b) * * *

(4) * * *

(v) In cases where an engine is to be imported for replacement purposes under the provisions of this paragraph (b)(4), the term ''engine manufacturer'' does not apply to an individual or other entity that does not possess a current Certificate of Conformity issued by EPA under this part.

[FR Doc. 00–7887 Filed 4–24–00; 8:45 am]

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Federal Register

Tuesday,
April 25, 2000

Part IV

Department of Defense
General Services Administration
National Aeronautics and Space Administration

48 CFR Chapter 1 and Parts 2, 16, 37, et al.

Federal Acquisition Circular 97–17; Introduction; Federal Acquisition Regulations; Competition Under Multiple Award Contracts; Determination of Price Reasonableness and Commerciality; Caribbean Basin Trade Initiative; Utilization of Indian Organizations and Indian-Owned Economic Enterprises; Ocean Transportation by U.S. Flag Vessels; Technical Amendments; Small Entity Compliance Guide; Final Rules

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Chapter 1

Federal Acquisition Circular 97–17; Introduction

AGENCIES: Department of Defense (DoD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Summary presentation of final rules.

SUMMARY: This document summarizes the Federal Acquisition Regulation (FAR) rules issued by the Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council (Councils) in this Federal Acquisition Circular (FAC) 97–17. The Councils drafted these FAR rules using plain language in accordance with the White House memorandum, Plain Language in Government Writing, dated June 1, 1998. The Councils wrote all new and revised text using plain language. A companion document, the Small Entity Compliance Guide (SECG), follows this FAC. The FAC, including the SECG, is available via the Internet at http://www.arnet.gov/far.

DATES: For effective dates and comment dates, see separate documents which follow.

FOR FURTHER INFORMATION CONTACT: The FAR Secretariat, Room 4035, GS Building, Washington, DC 20405, (202) 501–4755, for information pertaining to status or publication schedules. For clarification of content, contact the analyst whose name appears in the table below in relation to each FAR case or subject area. Please cite FAC 97–17 and specific FAR case numbers. Interested parties may also visit our website at http://www.arnet.gov/far.

Item	Subject	FAR case	Analyst
I	Competition under Multiple Award Contracts	1999–014	De Stefano.
II	Determination of Price Reasonableness and Commerciality	1998–300 (98–300)	Olson.
III	Caribbean Basin Trade Initiative	2000–003	Linfield.
IV	Utilization of Indian Organizations and Indian-Owned Economic Enterprises	1999–301 (99–301)	Moss.
V	Ocean Transportation by U.S.-Flag Vessels	1998–604 (98–604)	Klein.
VI	Technical Amendments..		

SUPPLEMENTARY INFORMATION: Summaries for each FAR rule follow. For the actual revisions and/or amendments to these FAR cases, refer to the specific item number and subject set forth in the documents following these item summaries.

Federal Acquisition Circular 97–17 amends the FAR as specified below:

Item I—Competition Under Multiple Award Contracts (FAR Case 1999–014)

This rule amends FAR 2.101, Subpart 16.5, and 37.201 to clarify what the contracting officer should consider when planning for and placing orders under multiple award contracts. This rule affects all contracting officers that award multiple award contracts or place task or delivery orders under them. The rule—

- Requires the contracting officer to include the name, address, telephone number, facsimile number, and e-mail address of the agency task and delivery order ombudsman in the solicitation and contracts if multiple awards will be made;
- Stresses key things the contracting officer must consider when deciding if a multiple award contract is appropriate, such as—
- Avoiding situations in which awardees specialize exclusively in one or a few areas within the statement of work;
- The scope and complexity of the contract requirement;
- The expected duration and frequency of task or delivery orders;
- The mix of resources a contractor must have to perform expected task or delivery order requirements; and
- The ability to maintain competition among the awardees throughout the contract's period of performance;
- Requires contracting officers to document their decision on whether or not to use multiple awards in the acquisition plan or contract file;
- Emphasizes the use of performance-based statements of work;
- Provides guidance on how to develop tailored order placement procedures;
- Requires contracting officers to consider cost or price as one of the factors in each selection decision for orders;
- Requires contracting officers to establish prices for each order that was not priced under the basic contract using the policies and methods in Subpart 15.4; and

Requires contracting officers to document the order placement rationale and price in the contract file.

Item II—Determination of Price Reasonableness and Commerciality (FAR Case 1998–300) (98–300)

This final rule makes a minor editorial change to FAR 15.403–3 and converts the interim rule, which was published in FAC 97–14 as Item VI, as final. The editorial change amends the cross reference at 15.403–3(c)(1). The remainder of the interim rule that has been in effect since September 24, 1999, remains the same. The primary amendments made in the interim rule that are made final in this rule—

- Clarify procedures associated with obtaining information other than cost or pricing data when acquiring commercial items; and
- Establish that offerors who fail to comply with requirements to provide the information shall be ineligible for award.

Item III—Caribbean Basin Trade Initiative (FAR Case 2000–003)

This final rule amends FAR Parts 25.003, 25.400, 25.404, and the clause at 52.225–5, Trade Agreements, to implement the determination of the United States Trade Representative to renew the treatment of Caribbean Basin country end products as eligible products under the Trade Agreements Act, with the exception of end products from the Dominican Republic and Honduras. This rule applies only if an acquisition is subject to the Trade Agreements Act (see FAR 25.403). Offers of end products from the Dominican Republic and Honduras are no longer acceptable under such acquisitions unless the contracting

officer does not receive any offers of U.S.-made end products or eligible products (designated, Caribbean Basin, or NAFTA country end products).

Item IV—Utilization of Indian Organizations and Indian-Owned Economic Enterprises (FAR Case 1999–301) (99–301)

This final rule amends FAR Subpart 26.1 and the clause at 52.226–1 to delete DoD-unique requirements relating to Indian Organizations and Indian-Owned Economic Enterprises from the FAR.

Item V—Ocean Transportation by U.S.-Flag Vessels (FAR Case 1998–604) (98–604)

This final rule amends FAR 47.504 and the clauses at 52.212–5, 52.213–4, and 52.247–64 to apply the preference for U.S.-flag vessels to contracts awarded using simplified acquisition procedures. This rule only affects civilian agency contracts that may involve ocean transportation of supplies subject to the Cargo Preference Act of 1954.

The rule also adds Alternate I of 52.247–64, Preference for Privately Owned U.S.-Flag Commercial Vessels, to the clause at 52.212–5, Contract Terms and Conditions Required to Implement Statutes or Executive Orders—Commercial Items. Alternate I applies when the supplies furnished under the contract must be transported exclusively in privately owned U.S.-flag vessels.

Item VI—Technical Amendments

These amendments update references and make editorial changes at sections 6.304, 31.101, 32.411, 32.502–4, 32.805, 42.1204, and 42–1205.

Dated: April 13, 2000.

Edward C. Loeb,

Director, Federal Acquisition Policy Division.

Federal Acquisition Circular (FAC) 97–17 is issued under the authority of the Secretary of Defense, the Administrator of General Services, and the Administrator for the National Aeronautics and Space Administration.

All Federal Acquisition Regulation (FAR) changes and other directive material contained in FAC 97–17 are effective April 25, 2000, except for Items IV and V, which are effective June 26, 2000. Each rule is applicable to solicitations issued on or after the rule's effective date.

Dated: April 5, 2000.

R.D. Kerrins, Jr.,

Acting Director, Defense Procurement.

Dated: April 11, 2000.

Sue McIver,

Acting Deputy Associate Administrator, Office of Acquisition Policy, General Services Administration.

Dated: April 3, 2000.

Tom Luedtke,

Associate Administrator for Procurement, National Aeronautics and Space Administration.

[FR Doc. 00–10130 Filed 4–24–00; 8:45 am]

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DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Parts 2, 16, and 37

[FAC 97–17; FAR Case 1999–014; Item I]

RIN 9000–AI53

Federal Acquisition Regulation; Competition Under Multiple Award Contracts

AGENCIES: Department of Defense (DoD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Final rule.

SUMMARY: The Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council (Councils) have agreed on a final rule amending the Federal Acquisition Regulation (FAR) to clarify what contracting officers should consider when planning for multiple awards of indefinite-delivery contracts and clarify how orders should be placed against the resultant contracts.

DATES: *Effective Date:* April 25, 2000.

Applicability Date: The FAR, as amended by this rule, is applicable to solicitations issued on or after April 25, 2000.

FOR FURTHER INFORMATION CONTACT: The FAR Secretariat, Room 4035, GS Building, Washington, DC, 20405, (202) 501–4755, for information pertaining to status or publication schedules. For clarification of content, contact Mr. Ralph De Stefano, Procurement Analyst, at (202) 501–1758. Please cite FAC 97–17, FAR case 1999–014.

SUPPLEMENTARY INFORMATION:

A. Background

This final rule, FAR case 1999–014, amends FAR Part 16 to provide guidance on multiple award task and delivery order contracts and amends FAR Part 37 to delete a definition and amends FAR Part 2 to insert the definition that was deleted from Part 37. FAR case 1999–014 is one of two cases that implement subsections 804(a) and (b) of the National Defense Authorization Act for Fiscal Year 2000 (Pub. L. 106–65). The other case, FAR Case 1999–303, Task Order and Delivery Order Contracts, has been developed and promulgation is awaiting final review and analysis of the Report Number GAO/NSIAD–00–56, B–281493, March 20, 2000, recently issued by the GAO regarding multiple award contracts. The Councils will evaluate the GAO report, in conjunction with the Office of Federal Procurement Policy, to determine what additional changes are needed.

FAR case 1999–014—

- Clarifies what contracting officers should consider when planning for multiple awards of indefinite-delivery contracts and clarifies how orders should be placed against the resultant contracts;
- Requires that all awardees be given a fair opportunity to compete on every task or delivery order placed under multiple-award contracts, unless a specific exception applies;
- Emphasizes key things the contracting officer should consider when placing orders, including streamlined procedures; and
- Reorganizes and revises the FAR text for ease of use.

The rule is written using plain language in accordance with the White House memorandum, Plain Language in Government Writing, dated June 1, 1998.

DoD, GSA, and NASA published a proposed rule in the **Federal Register** at 64 FR 70158, December 15, 1999. Fourteen respondents provided public comments. We considered twelve public comments in finalizing the rule. We received the other two public comments more than two weeks after the closing date for comments and after the ad hoc committee had analyzed public comments. We did not consider these comments in the finalization of the rule.

This rule was not subject to Office of Management and Budget review under Section 6(b) of Executive Order 12866, Regulatory Planning and Review, dated September 30, 1993. This rule is not a major rule under 5 U.S.C. 804.

B. Regulatory Flexibility Act

The Department of Defense, the General Services Administration, and the National Aeronautics and Space Administration certify that this final

rule will not have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.*, because the rule only clarifies what the contracting officer should consider when planning for and placing orders under multiple award contracts.

Paperwork Reduction Act

The Paperwork Reduction Act does not apply because the changes to the FAR do not impose information collection requirements that require the approval of the Office of Management and Budget under 44 U.S.C. 3501, *et seq.*

List of Subjects in 48 CFR Parts 2, 16, and 37

Government procurement.

Dated: April 13, 2000.

Edward C. Loeb,

Director, Federal Acquisition Policy Division.

Therefore, DoD, GSA, and NASA amend 48 CFR parts 2, 16, and 37 as set forth below:

1. The authority citation for 48 CFR parts 2, 16, and 37 continues to read as follows:

Authority: 40 U.S.C. 486(c); 10 U.S.C. chapter 137; and 42 U.S.C. 2473(c).

PART 2—DEFINITIONS OF WORDS AND TERMS

2. Amend section 2.101 by adding, in alphabetical order, the definition ''Advisory and assistance services'' to read as follows:

2.101 Definitions.

* * * * *

Advisory and assistance services means those services provided under contract by nongovernmental sources to support or improve: Organizational policy development; decision-making; management and administration; program and/or project management and administration; or R&D activities. It can also mean the furnishing of professional advice or assistance rendered to improve the effectiveness of Federal management processes or procedures (including those of an engineering and technical nature). In rendering the foregoing services, outputs may take the form of information, advice, opinions, alternatives, analyses, evaluations, recommendations, training and the day-to-day aid of support personnel needed for the successful performance of ongoing Federal operations. All advisory and assistance services are classified in one of the following definitional subdivisions:

(1) Management and professional support services, *i.e.,* contractual services that provide assistance, advice or training for the efficient and effective management and operation of organizations, activities (including management and support services for R&D activities), or systems. These services are normally closely related to the basic responsibilities and mission of the agency originating the requirement for the acquisition of services by contract. Included are efforts that support or contribute to improved organization of program management, logistics management, project monitoring and reporting, data collection, budgeting, accounting, performance auditing, and administrative technical support for conferences and training programs.

(2) Studies, analyses and evaluations, *i.e.*, contracted services that provide organized, analytical assessments/evaluations in support of policy development, decision-making, management, or administration. Included are studies in support of R&D activities. Also included are acquisitions of models, methodologies, and related software supporting studies, analyses or evaluations.

(3) Engineering and technical services, *i.e.*, contractual services used to support the program office during the acquisition cycle by providing such services as systems engineering and technical direction (see 9.505–1(b)) to ensure the effective operation and maintenance of a weapon system or major system as defined in OMB Circular No. A–109 or to provide direct support of a weapon system that is essential to research, development, production, operation or maintenance of the system.

* * * * *

PART 16—TYPES OF CONTRACTS

3. Revise section 16.500 to read as follows:

16.500 Scope of subpart.

(a) This subpart prescribes policies and procedures for making awards of indefinite-delivery contracts and establishes a preference for making multiple awards of indefinite-quantity contracts.

(b) This subpart does not limit the use of other than competitive procedures authorized by part 6.

(c) Nothing in this subpart restricts the authority of the General Services Administration (GSA) to enter into schedule, multiple award, or task or delivery order contracts under any other provision of law. Therefore, GSA regulations and the coverage for the Federal Supply Schedule program in subpart 8.4 and part 38 take precedence over this subpart.

(d) The statutory multiple award preference implemented by this subpart does not apply to architect-engineer contracts subject to the procedures in subpart 36.6. However, agencies are not precluded from making multiple awards for architect-engineer services using the procedures in this subpart, provided the selection of contractors and placement of orders are consistent with subpart 36.6.

16.501–1 [Amended]

4. Amend section 16.501–1 by removing the definition ''Advisory and assistance services''.

5. Revise section 16.504 to read as follows:

16.504 Indefinite-quantity contracts.

(a) *Description.* An indefinite-quantity contract provides for an indefinite quantity, within stated limits, of supplies or services during a fixed period. The Government places orders for individual requirements. Quantity limits may be stated as number of units or as dollar values.

(1) The contract must require the Government to order and the contractor to furnish at least a stated minimum quantity of supplies or services. In addition, if ordered, the contractor must furnish any additional quantities, not to exceed the stated maximum. The contracting officer should establish a reasonable maximum quantity based on market research, trends on recent contracts for similar supplies or services, survey of potential users, or any other rational basis.

(2) To ensure that the contract is binding, the minimum quantity must be more than a nominal quantity, but it should not exceed the amount that the Government is fairly certain to order.

(3) The contract may also specify maximum or minimum quantities that the Government may order under each task or delivery order and the maximum that it may order during a specific period of time.

(4) A solicitation and contract for an indefinite quantity must—

(i) Specify the period of the contract, including the number of options and the period for which the Government may extend the contract under each option;

(ii) Specify the total minimum and maximum quantity of supplies or services the Government will acquire under the contract;

(iii) Include a statement of work, specifications, or other description, that reasonably describes the general scope,

nature, complexity, and purpose of the supplies or services the Government will acquire under the contract in a manner that will enable a prospective offeror to decide whether to submit an offer;

(iv) State the procedures that the Government will use in issuing orders, including the ordering media, and, if multiple awards may be made, state the procedures and selection criteria that the Government will use to provide awardees a fair opportunity to be considered for each order (see 16.505(b)(1));

(v) Include the name, address, telephone number, facsimile number, and e-mail address of the agency task and delivery order ombudsman (see 16.505(b)(5)) if multiple awards may be made;

(vi) Include a description of the activities authorized to issue orders; and

(vii) Include authorization for placing oral orders, if appropriate, provided that the Government has established procedures for obligating funds and that oral orders are confirmed in writing.

(b) *Application.* Contracting officers may use an indefinite-quantity contract when the Government cannot predetermine, above a specified minimum, the precise quantities of supplies or services that the Government will require during the contract period, and it is inadvisable for the Government to commit itself for more than a minimum quantity. The contracting officer should use an indefinite-quantity contract only when a recurring need is anticipated.

(c) *Multiple award preference*—(1) *Planning the acquisition.* (i) Except for indefinite-quantity contracts for advisory and assistance services as provided in paragraph (c)(2) of this section, the contracting officer must, to the maximum extent practicable, give preference to making multiple awards of indefinite-quantity contracts under a single solicitation for the same or similar supplies or services to two or more sources.

(ii)(A) The contracting officer must determine whether multiple awards are appropriate as part of acquisition planning. The contracting officer must avoid situations in which awardees specialize exclusively in one or a few areas within the statement of work, thus creating the likelihood that orders in those areas will be awarded on a sole-source basis; however, each awardee need not be capable of performing every requirement as well as any other awardee under the contracts. The contracting officer should consider the following when determining the number of contracts to be awarded:

(*1*) The scope and complexity of the contract requirement.

(*2*) The expected duration and frequency of task or delivery orders.

(*3*) The mix of resources a contractor must have to perform expected task or delivery order requirements.

(*4*) The ability to maintain competition among the awardees throughout the contracts' period of performance.

(B) The contracting officer must not use the multiple award approach if—

(*1*) Only one contractor is capable of providing performance at the level of quality required because the supplies or services are unique or highly specialized;

(*2*) Based on the contracting officer's knowledge of the market, more favorable terms and conditions, including pricing, will be provided if a single award is made;

(*3*) The expected cost of administration of multiple contracts outweighs the expected benefits of making multiple awards;

(*4*) The projected orders are so integrally related that only a single contractor can reasonably perform the work;

(*5*) The total estimated value of the contract is less than the simplified acquisition threshold; or

(*6*) Multiple awards would not be in the best interests of the Government.

(C) The contracting officer must document the decision whether or not to use multiple awards in the acquisition plan or contract file. The contracting officer may determine that a class of acquisitions is not appropriate for multiple awards (see subpart 1.7).

(2) *Contracts for advisory and assistance services.* (i) Except as provided in paragraph (c)(2)(ii) of this section, if an indefinite-quantity contract for advisory and assistance services exceeds 3 years and $10 million, including all options, the contracting officer must make multiple awards unless—

(A) The contracting officer or other official designated by the head of the agency determines in writing, as part of acquisition planning, that multiple awards are not practicable. The contracting officer or other official must determine that only one contractor can reasonably perform the work because either the scope of work is unique or highly specialized or the tasks so integrally related;

(B) The contracting officer or other official designated by the head of the agency determines in writing, after the evaluation of offers, that only one offeror is capable of providing the services required at the level of quality required; or

(C) Only one offer is received.

(ii) The requirements of paragraph (c)(2)(i) of this section do not apply if the contracting officer or other official designated by the head of the agency determines that the advisory and assistance services are incidental and not a significant component of the contract.

6. Revise section 16.505 to read as follows:

16.505 Ordering.

(a) *General.* (1) The contracting officer does not synopsize orders under indefinite-delivery contracts.

(2) Individual orders must clearly describe all services to be performed or supplies to be delivered. Orders must be within the scope, period, and maximum value of the contract.

(3) Performance-based work statements must be used to the maximum extent practicable, if the contract is for services (see 37.102(a)).

(4) Orders may be placed by using any medium specified in the contract.

(5) Orders placed under indefinite-delivery contracts must contain the following information:

(i) Date of order.

(ii) Contract number and order number.

(iii) For supplies and services, contract item number and description, quantity, and unit price or estimated cost or fee.

(iv) Delivery or performance schedule.

(v) Place of delivery or performance (including consignee).

(vi) Any packaging, packing, and shipping instructions.

(vii) Accounting and appropriation data.

(viii) Method of payment and payment office, if not specified in the contract (see 32.1110(e)).

(6) No protest under subpart 33.1 is authorized in connection with the issuance or proposed issuance of an order under a task-order contract or delivery-order contract, except for a protest on the grounds that the order increases the scope, period, or maximum value of the contract (10 U.S.C. 2304c(d) and 41 U.S.C. 253j(d)).

(b) *Orders under multiple award contracts*—(1) *Fair opportunity.* (i) The contracting officer must provide each awardee a fair opportunity to be considered for each order exceeding $2,500 issued under multiple delivery-order contracts or multiple task-order contracts, except as provided for in paragraph (b)(2) of this section.

(ii) The contracting officer may exercise broad discretion in developing

appropriate order placement procedures. The contracting officer should keep submission requirements to a minimum. Contracting officers may use streamlined procedures, including oral presentations. In addition, the contracting officer need not contact each of the multiple awardees under the contract before selecting an order awardee if the contracting officer has information available to ensure that each awardee is provided a fair opportunity to be considered for each order. The competition requirements in part 6 and the policies in subpart 15.3 do not apply to the ordering process. However, the contracting officer must—

(A) Develop placement procedures that will provide each awardee a fair opportunity to be considered for each order and that reflect the requirement and other aspects of the contracting environment;

(B) Not use any method (such as allocation or designation of any preferred awardee) that would not result in fair consideration being given to all awardees prior to placing each order;

(C) Tailor the procedures to each acquisition;

(D) Include the procedures in the solicitation and the contract; and

(E) Consider price or cost under each order as one of the factors in the selection decision.

(iii) The contracting officer should consider the following when developing the procedures:

(A)(*1*) Past performance on earlier orders under the contract, including quality, timeliness and cost control.

(*2*) Potential impact on other orders placed with the contractor.

(*3*) Minimum order requirements.

(B) Formal evaluation plans or scoring of quotes or offers are not required.

(2) *Exceptions to the fair opportunity process.* The only exceptions to the requirement to provide each awardee a fair opportunity to be considered for each order exceeding $2,500 are—

(i) The agency need for the supplies or services is so urgent that providing a fair opportunity would result in unacceptable delays;

(ii) Only one awardee is capable of providing the supplies or services required at the level of quality required because the supplies or services ordered are unique or highly specialized;

(iii) The order must be issued on a sole-source basis in the interest of economy and efficiency as a logical follow-on to an order already issued under the contract, provided that all awardees were given a fair opportunity to be considered for the original order; or

(iv) It is necessary to place an order to satisfy a minimum guarantee.

(3) *Pricing orders.* If the contract did not establish the price for the supply or service, the contracting officer must establish prices for each order using the policies and methods in subpart 15.4.

(4) *Decision documentation for orders.* The contracting officer must document in the contract file the rationale for placement and price of each order.

(5) *Task and Delivery Order Ombudsman.* The head of the agency must designate a task-order contract and delivery-order contract ombudsman. The ombudsman must review complaints from contractors and ensure they are afforded a fair opportunity to be considered, consistent with the procedures in the contract. The ombudsman must be a senior agency official who is independent of the contracting officer and may be the agency's competition advocate.

(c) *Limitation on ordering period for task-order contracts for advisory and assistance services.* (1) Except as provided for in paragraphs (c)(2) and (c)(3), the ordering period of a task-order contract for advisory and assistance services, including all options or modifications, normally may not exceed 5 years.

(2) The 5-year limitation does not apply when—

(i) A longer ordering period is specifically authorized by a statute; or

(ii) The contract is for an acquisition of supplies or services that includes the acquisition of advisory and assistance services and the contracting officer, or other official designated by the head of the agency, determines that the advisory and assistance services are incidental and not a significant component of the contract.

(3) The contracting officer may extend the contract on a sole-source basis only once for a period not to exceed 6 months if the contracting officer, or other official designated by the head of the agency, determines that—

(i) The award of a follow-on contract is delayed by circumstances that were not reasonably foreseeable at the time the initial contract was entered into; and

(ii) The extension is necessary to ensure continuity of services, pending the award of the follow-on contract.

7. Amend section 16.506—

a. In paragraphs (a), (b), (c), (d)(1), and (e) by removing the words ''The contracting officer shall insert'' and adding, in their place, the word ''Insert'';

b. In paragraphs (d)(2), (d)(3), and (d)(4) by removing the words ''the contracting officer shall''; and

c. By revising paragraphs (d)(5), (f), and (g) to read as follows:

16.506 Solicitation provisions and contract clauses.

* * * * *

(d) * * *

(5) If the contract—

(i) Includes subsistence for Government use and resale in the same schedule and similar products may be acquired on a brand-name basis; and

(ii) Involves a partial small business set-aside, use the clause with its Alternate IV.

* * * * *

(f) Insert the provision at 52.216–27, Single or Multiple Awards, in solicitations for indefinite-quantity contracts that may result in multiple contract awards. Modify the provision to specify the estimated number of awards. Do not use this provision for advisory and assistance services contracts that exceed 3 years and $10 million (including all options).

(g) Insert the provision at 52.216–28, Multiple Awards for Advisory and Assistance Services, in solicitations for task-order contracts for advisory and assistance services that exceed 3 years and $10 million (including all options), unless a determination has been made under 16.504(c)(2)(i)(A). Modify the provision to specify the estimated number of awards.

PART 37—SERVICE CONTRACTING

37.201 Definition.

8. Amend section 37.201 by revising the section heading to read as set forth above, and by removing the definition ''Advisory and assistance services''.

[FR Doc. 00–10131 Filed 4–24–00; 8:45 am]

BILLING CODE 6820–EP–P

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Parts 12, 13, and 15

[FAC 97–17; FAR Case 1998–300 (98–300); Item II]

RIN 9000–AI45

Federal Acquisition Regulation; Determination of Price Reasonableness and Commerciality

AGENCIES: Department of Defense (DoD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Final rule.

SUMMARY: The Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council (Councils) have agreed on a final rule amending the Federal Acquisition Regulation (FAR) to implement Sections 803 and 808 of the Strom Thurmond National Defense Authorization Act for Fiscal Year 1999 (Pub. L. 105–261).

DATES: *Effective Date:* April 25, 2000.

Applicability Date: The FAR, as amended by this rule, is applicable to solicitations issued on or after April 25, 2000.

FOR FURTHER INFORMATION CONTACT: The FAR Secretariat, Room 4035, GS Building, Washington, DC, 20405, (202) 501–4755, for information pertaining to status or publication schedules. For clarification of content, contact Mr. Jeremy Olson at (202) 501–0692. Please cite FAC 97–17, FAR case 1998–300.

SUPPLEMENTARY INFORMATION:

A. Background

The Councils initiated this case to implement Sections 803 and 808 of the Strom Thurmond National Defense Authorization Act for Fiscal Year 1999 (Pub. L. 105–261) as follows:

(a) *Section 803 of Public Law 105–261.* (1) Paragraphs (a)(2)(A) through (a)(2)(C) of Section 803 of Pub. L. 105–261 require that the FAR provide specific guidance concerning—

(i) The appropriate application and precedence of various price analysis tools;

(ii) The circumstances under which contracting officers should require offerors of exempt commercial items to provide information other than cost or pricing data; and

(iii) The role and responsibility of support organizations in determining price reasonableness.

(2) Paragraph (a)(2)(D) of Section 803 is not implemented under this case.

(b) *Section 808 of Public Law 105–261.* Section 808 of Public Law 105–261 requires amending the FAR to—

(1) Clarify procedures associated with obtaining information other than cost or pricing data;

(2) Establish that offerors who fail to comply with requirements to provide the information shall be ineligible for award; and

(3) Establish exceptions, as appropriate.

The Councils published an interim rule in the **Federal Register** on September 24, 1999 (64 FR 51828). Five respondents submitted comments in response to the interim rule. The Councils considered all comments in the development of the final rule.

This rule was not subject to Office of Management and Budget review under Section 6(b) of Executive Order 12866, Regulatory Planning and Review, dated September 30, 1993. This rule is not a major rule under 5 U.S.C. 804.

B. Regulatory Flexibility Act

The Councils prepared a Final Regulatory Flexibility Analysis (FRFA) consistent with 5 U.S.C. 604. Interested parties may obtain a copy of the FRFA from the FAR Secretariat. The FRFA is summarized as follows:

The primary objective of this rule is to provide guidance on determining price reasonableness and commerciality, and to specify that offerors failing to comply with a requirement to provide certain information other than cost or pricing data are ineligible for award. There were no issues raised by the public in response to the Initial Regulatory Flexibility Analysis. The rule will apply to all offerors, large or small, that respond to solicitations for commercial items for which information other than cost or pricing data is required. Few, if any, offerors are expected to fail to comply with the requirements to provide information other than cost or pricing data. The rule does not impose any new reporting or recordkeeping requirements. There are no significant alternatives to the rule that would accomplish the stated objectives yet further reduce impact on small entities. The rule includes only FAR text revisions required to implement the statute cited herein.

The FAR Secretariat has submitted a copy of the FRFA to the Chief Counsel for Advocacy of the Small Business Administration.

C. Paperwork Reduction Act

The Paperwork Reduction Act does not apply because the changes to the FAR do not impose information collection requirements that require the approval of the Office of Management and Budget under 44 U.S.C. 3501, *et seq.*

List of Subjects in 48 CFR Parts 12, 13, and 15

Government procurement.

Dated: April 13, 2000.

Edward C. Loeb,

Director, Federal Acquisition Policy Division.

Interim Rule Adopted as Final With Change

Accordingly, DoD, GSA, and NASA adopt the interim rule amending 48 CFR parts 12, 13, and 15, which was published in the **Federal Register** on September 24, 1999 (64 FR 51828), as a final rule with the following change:

PART 15—CONTRACTING BY NEGOTIATION

1. The authority citation for 48 CFR parts 12, 13, and 15 continues to read as follows:

Authority: 40 U.S.C. 486(c); 10 U.S.C. chapter 137; and 42 U.S.C. 2473(c).

15.403–3 [Amended]

2. Amend section 15.403–3 at the end of paragraph (c)(1) by removing ''(see 15.403–3(a)(1))'' and adding ''(see 15.404–1)'' in its place.

[FR Doc. 00–10132 Filed 4–24–00; 8:45 am]

BILLING CODE 6820–EP–P

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Parts 25 and 52

[FAC 97–17; FAR Case 2000–003; Item III]

RIN 9000–AI73

Federal Acquisition Regulation; Caribbean Basin Trade Initiative

AGENCIES: Department of Defense (DoD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Final rule.

SUMMARY: The Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council (Councils) have agreed on a final rule amending the Federal Acquisition Regulation (FAR) to implement the determination of the United States Trade Representative (USTR) to renew the treatment of Caribbean Basin country end products as eligible products under the Trade Agreements Act, with the exception of end products from the Dominican Republic and Honduras.

DATES: *Effective Date:* April 25, 2000.

Applicability Date: The FAR, as amended by this rule, is applicable to solicitations issued on or after April 25, 2000.

FOR FURTHER INFORMATION CONTACT: The FAR Secretariat, Room 4035, GS Building, Washington, DC, 20405, (202) 501–4755, for information pertaining to status or publication schedules. For clarification of content, contact Mr. Paul Linfield, Procurement Analyst, at (202) 501–1757. Please cite FAC 97–17, FAR case 2000–003.

SUPPLEMENTARY INFORMATION:

A. Background

The USTR published a notice in the **Federal Register** at 65 FR 9038, February 23, 2000, renewing the treatment of Caribbean Basin country

end products as eligible products under the Trade Agreements Act, with the exception of the end products from the Dominican Republic and Honduras. This rule implements that determination. The prior determination expired September 30, 1999, except that the determination regarding the end products of Panama extended until September 30, 2000.

This rule was not subject to Office of Management and Budget review under Section 6(b) of Executive Order 12866, Regulatory Planning and Review, dated September 30, 1993. This rule is not a major rule under 5 U.S.C. 804.

B. Regulatory Flexibility Act

The final rule does not constitute a significant FAR revision within the meaning of FAR 1.501 and Public Law 98–577, and publication for public comments is not required. However, the Councils will consider comments from small entities concerning the affected FAR parts in accordance with 5 U.S.C. 610. Interested parties must submit such comments separately and should cite 5 U.S.C. 601, *et seq.* (FAC 97–17, FAR case 2000–003), in correspondence.

C. Paperwork Reduction Act

The Paperwork Reduction Act does not apply because the changes to the FAR do not impose information collection requirements that require the approval of the Office of Management and Budget under 44 U.S.C. 3501, *et seq.*

List of Subjects in 48 CFR Parts 25 and 52

Government procurement.

Dated: April 13, 2000.

Edward C. Loeb,

Director, Federal Acquisition Policy Division.

Therefore, DoD, GSA, and NASA amend 48 CFR parts 25 and 52 as set forth below:

1. The authority citation for 48 CFR parts 25 and 52 continues to read as follows:

Authority: 40 U.S.C. 486(c); 10 U.S.C. chapter 137; and 42 U.S.C. 2473(c):

PART 25—FOREIGN ACQUISITION

2. Revise the definition ''Caribbean Basin country'' in section 25.003 to read as follows:

25.003 Definitions.

* * * * *

Caribbean Basin country means any of the following countries: Antigua and Barbuda, Aruba, Bahamas, Barbados, Belize, British Virgin Islands, Costa Rica, Dominica, El Salvador, Grenada, Guatemala, Guyana, Haiti, Jamaica, Montserrat, Netherlands Antilles, Nicaragua, Panama, St. Kitts and Nevis, St. Lucia, St. Vincent and the Grenadines, Trinidad and Tobago.

* * * * *

3. In section 25.400, revise paragraph (a)(2) to read as follows:

25.400 Scope of subpart.

(a) * * *

(2) The Caribbean Basin Trade Initiative (the determination of the U.S. Trade Representative that end products granted duty-free entry from countries designated by the President as beneficiaries under the Caribbean Basin Economic Recovery Act (19 U.S.C. 2701, *et seq.*), with the exception of the Dominican Republic and Honduras, must be treated as eligible products under the Trade Agreements Act);

* * * * *

4. Revise section 25.404 to read as follows:

25.404 Caribbean Basin Trade Initiative.

Under the Caribbean Basin Trade Initiative, the United States Trade Representative has determined that, for acquisitions subject to the Trade Agreements Act, Caribbean Basin country end products must be treated as eligible products. This determination is effective until September 30, 2000. The U.S. Trade Representative may extend these dates through a document in the **Federal Register**.

PART 52—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

52.225–5 [Amended]

5. Amend section 52.225–5 by revising the date of the clause to read ''(APR 2000)''; and in paragraph (a), in the definition ''Caribbean Basin country'', by removing ''Dominican Republic,'' and ''Honduras,''.

[FR Doc. 00–10133 Filed 4–24–00; 8:45 am]

BILLING CODE 6820–EP–P

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Parts 26 and 52

[FAC 97–17; FAR Case 1999–301 (99–301); Item IV]

RIN 9000–AI52

Federal Acquisition Regulation; Utilization of Indian Organizations and Indian-Owned Economic Enterprises

AGENCIES: Department of Defense (DoD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Final rule.

SUMMARY: The Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council (Councils) have agreed on a final rule amending the Federal Acquisition Regulation (FAR) to delete DoD-unique language pertaining to incentive payments made to prime contractors for the utilization of Indian organizations and Indian-owned economic enterprises.

DATES: *Effective Date:* June 26, 2000. *Applicability Date:* The FAR, as amended by this rule, is applicable to solicitations issued on or after June 26, 2000.

FOR FURTHER INFORMATION CONTACT: The FAR Secretariat, Room 4035, GS Building, Washington, DC 20405, (202) 501–4755, for information pertaining to status or publication schedules. For clarification of content, contact Ms. Victoria Moss, Procurement Analyst, at (202) 501–4764. Please cite FAC 97–17, FAR case 1999–301.

SUPPLEMENTARY INFORMATION:

A. Background

DoD, GSA, and NASA published a proposed rule in the **Federal Register** on October 27, 1999 (64 FR 57964). Six sources submitted comments in response to the proposed rule. The Councils considered all comments in the development of the final rule.

Section 504 of the Indian Financing Act of 1974 (25 U.S.C. 1544) established the Indian Incentive Program. Annual DoD appropriations acts have restricted DoD payments under the Program to those contractors that submitted subcontracting plans pursuant to 15 U.S.C. 637(d) and those contractors participating in the test program for comprehensive small business

subcontracting plans established by Section 854 of Public Law 101–189. Section 8024 of the DoD Appropriations Act for Fiscal Year 1999 (Public Law 105–262) eliminated the link between a DoD contractor's subcontracting plan requirement and the contractor's eligibility for participation in the Indian Incentive Program. This change now allows DoD to make incentive payments to small businesses that subcontract to Indian organizations or Indian-owned economic enterprises when the contract includes the clause at FAR 52.226–1, Utilization of Indian Organizations and Indian-Owned Economic Enterprises. This rule removes obsolete DoD-unique implementing guidance from the FAR. The Defense Acquisition Regulations Council is adding guidance to the Defense Federal Acquisition Regulation Supplement under a separate case to implement the change made in Section 8024 of Public Law 105–262.

This rule was not subject to Office of Management and Budget review under Section 6(b) of Executive Order 12866, Regulatory Planning and Review, dated September 30, 1993. This rule is not a major rule under 5 U.S.C. 804.

B. Regulatory Flexibility Act

The Department of Defense, the General Services Administration, and the National Aeronautics and Space Administration certify that this final rule will not have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.*, because the rule merely deletes obsolete DoD-unique implementing guidance from the FAR. The rule will have no effect on small entities doing business with civilian agencies.

C. Paperwork Reduction Act

The Paperwork Reduction Act (Pub. L. 104–13) does not apply because the changes to the FAR do not impose information collection requirements that require the approval of the Office of Management and Budget under 44 U.S.C. 3501, *et seq.*

List of Subjects in 48 CFR Parts 26 and 52

Government procurement.

Dated: April 13, 2000.

Edward C. Loeb,

Director, Federal Acquisition Policy Division.

Therefore, DoD, GSA, and NASA amend 48 CFR parts 26 and 52 as set forth below:

1. The authority citation for 48 CFR parts 26 and 52 continues to read as follows:

Authority: 40 U.S.C. 486(c); 10 U.S.C. chapter 137; and 42 U.S.C. 2473(c).

PART 26—OTHER SOCIOECONOMIC PROGRAMS

26.101 [Amended]

2. Amend section 26.101 as follows:

a. In the definition ''Indian'', remove ''which'' and insert ''that'' in its place;

b. In the definition ''Indian-owned economic enterprise'', remove ''shall constitute'' and insert ''constitutes'' in its place; and

c. In the definition ''Indian tribe'', remove ''which'' and insert ''that'' in its place.

3. Revise section 26.104 to read as follows:

26.104 Contract clause.

Contracting officers in civilian agencies may insert the clause at 52.226–1, Utilization of Indian Organizations and Indian-Owned Economic Enterprises, in solicitations and contracts if—

(a) In the opinion of the contracting officer, subcontracting possibilities exist for Indian organizations or Indian-owned economic enterprises; and

(b) Funds are available for any increased costs as described in paragraph (b)(2) of the clause at 52.226–1.

PART 52—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

4. Amend section 52.226–1 as follows:

a. Revise the date of the clause;

b. Remove paragraph (a);

c. Redesignate paragraphs (b) through (d) as (a) through (c), respectively;

d. In the newly designated paragraph (a):

(1) Remove ''which'' from the definition ''Indian'' and insert ''that'' in its place;

(2) Remove ''shall constitute'' from the definition ''Indian-owned economic enterprise'' and insert ''constitutes'' in its place; and

(3) Remove ''which'' from the definition ''Indian tribe'' and insert ''that'' in its place.

e. Revise newly designated paragraphs (b) and (c).

The revised text reads as follows:

52.226–1 Utilization of Indian Organizations and Indian-Owned Economic Enterprises.

* * * * *

Utilization of Indian Organizations and Indian-Owned Economic Enterprises (June 2000)

* * * * *

(b) The Contractor shall use its best efforts to give Indian organizations and Indian-owned economic enterprises (25 U.S.C. 1544) the maximum practicable opportunity to participate in the subcontracts it awards to the fullest extent consistent with efficient performance of its contract.

(1) The Contracting Officer and the Contractor, acting in good faith, may rely on the representation of an Indian organization or Indian-owned economic enterprise as to its eligibility, unless an interested party challenges its status or the Contracting Officer has independent reason to question that status. In the event of a challenge to the representation of a subcontractor, the Contracting Officer will refer the matter to the U.S. Department of the Interior, Bureau of Indian Affairs (BIA), Attn: Chief, Division of Contracting and Grants Administration, 1849 C Street, NW., MS 2626–MIB, Washington, DC 20240–4000.

The BIA will determine the eligibility and notify the Contracting Officer. No incentive payment will be made within 50 working days of subcontract award or while a challenge is pending. If a subcontractor is determined to be an ineligible participant, no incentive payment will be made under the Indian Incentive Program.

(2) The Contractor may request an adjustment under the Indian Incentive Program to the following:

(i) The estimated cost of a cost-type contract.

(ii) The target cost of a cost-plus-incentive-fee prime contract.

(iii) The target cost and ceiling price of a fixed-price incentive prime contract.

(iv) The price of a firm-fixed-price prime contract.

(3) The amount of the adjustment to the prime contract is 5 percent of the estimated cost, target cost, or firm-fixed-price included in the subcontract initially awarded to the Indian organization or Indian-owned economic enterprise.

(4) The Contractor has the burden of proving the amount claimed and must assert its request for an adjustment prior to completion of contract performance.

(c) The Contracting Officer, subject to the terms and conditions of the contract and the availability of funds, will authorize an incentive payment of 5 percent of the amount paid to the subcontractor. The Contracting Officer will seek funding in accordance with agency procedures.

(End of clause)

[FR Doc. 00–10134 Filed 4–24–00; 8:45 am]

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DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Parts 47 and 52

[FAC 97–17; FAR Case 1998–604 (98–604); Item V]

RIN 9000–AI39

Federal Acquisition Regulation; Ocean Transportation by U.S.-Flag Vessels

AGENCIES: Department of Defense (DoD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Final rule.

SUMMARY: The Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council (Councils) have agreed on a final rule amending the Federal Acquisition Regulation (FAR) to apply the preference for U.S.-flag vessels to contracts awarded using simplified acquisition procedures.

DATES: *Effective Date:* June 26, 2000.

Applicability Date: The FAR, as amended by this rule, is applicable to solicitations issued on or after June 26, 2000.

FOR FURTHER INFORMATION CONTACT: The FAR Secretariat, Room 4035, GS Building, Washington, DC 20405, (202) 501–4755, for information pertaining to status or publication schedules. For clarification of content, contact Ms. Linda Klein, Procurement Analyst, at (202) 501–3775. Please cite FAC 97–17, FAR case 1998–604.

SUPPLEMENTARY INFORMATION:

A. Background

The Councils published a proposed rule in the **Federal Register** on July 12, 1999 (64 FR 37640). Five respondents submitted public comments on the proposed rule. The Councils considered all public comments in the formulation of the final rule.

This rule amends the FAR as follows:

- Applies the preference for U.S.-flag vessels to contracts awarded using simplified acquisition procedures (47.504, 52.213–4, and 52.247–64).
- Adds to the clause at 52.212–5, Contract Terms and Conditions Required to Implement Statutes or Executive Orders—Commercial Items, Alternate I to 52.247–64, Preference for Privately Owned U.S.-Flag Commercial Vessels.

The final rule does not incorporate in the clause at 52.247–64 the exception at 47.504(e) for subcontracts for commercial items or commercial components. The Councils will address this issue under FAR case 1999–024, Preference for U.S.-Flag Vessels—Subcontracts for Commercial Items.

This rule was not subject to Office of Management and Budget review under Section 6(b) of Executive Order 12866, Regulatory Planning and Review, dated September 30, 1993. This rule is not a major rule under 5 U.S.C. 804.

B. Regulatory Flexibility Act

The Department of Defense, the General Services Administration, and the National Aeronautics and Space Administration certify that this final rule will not have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.*, because most ocean transportation companies are large business concerns. This rule does not apply to acquisitions by the Department of Defense.

C. Paperwork Reduction Act

The Paperwork Reduction Act applies. The information collection requirements of the clause at FAR 52.247–64 have been approved under OMB Control Number 9000–0061, which also covers clauses at 52.247–6, 52.247–29 through 52.247–44, 52.247–48, 52.247–52, and 52.247–57. FAR 52.247–64 requires contractors to submit a legible copy of the on-board ocean bill of lading for each shipment to the contracting officer and the Maritime Administration. This rule makes 52.247–64 applicable to acquisitions below the simplified acquisition threshold. However, these respondents are already required to submit some form of bill of lading under 52.247–29 through 52.247–44. We estimate an increased number of responses per respondent (21), but a decreased number of hours per response (.05), resulting in no change to the number of respondents (65,000) and total response hours (65,780).

List of Subjects in 48 CFR Parts 47 and 52

Government procurement.

Dated: April 13, 2000.

Edward C. Loeb,

Director, Federal Acquisition Policy Division.

Therefore, DoD, GSA, and NASA amend 48 CFR parts 47 and 52 as set forth below:

1. The authority citation for 48 CFR parts 47 and 52 continues to read as follows:

Authority: 40 U.S.C. 486(c); 10 U.S.C. chapter 137; and 42 U.S.C. 2473(c).

PART 47—TRANSPORTATION

47.504 [Amended]

2. In section 47.504, remove paragraph (d) and redesignate paragraph (e) as (d).

PART 52—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

3. In section 52.212–5, revise the date of the clause; redesignate paragraph (b)(26) as (b)(26)(i); and add paragraph (b)(26)(ii) to read as follows:

52.212–5 Contract Terms and Conditions Required to Implement Statutes or Executive Orders—Commercial Items.

* * * * *

Contract Terms and Conditions Required To Implement Statutes or Executive Orders—Commercial Items (June 2000)

* * * * *

(b) * * *

__ (26)(ii) Alternate I of 52.247–64.

* * * * *

4. In section 52.213–4, revise the date of the clause; and add paragraph (b)(1)(xi) to read as follows:

52.213–4 Terms and Conditions—Simplified Acquisitions (Other Than Commercial Items).

* * * * *

Terms and Conditions—Simplified Acquisitions (Other Than Commercial Items) (June 2000)

* * * * *

(b) * * *

(1) * * *

(xi) 52.247–64, Preference for Privately Owned U.S.-Flag Commercial Vessels (June 2000) (46 U.S.C. 1241). (Applies to supplies transported by ocean vessels.)

* * * * *

5. In section 52.247–64, revise the date of the clause and paragraph (d); and remove paragraph (e)(1) and redesignate paragraphs (e)(2) through (e)(4) as (e)(1) through (e)(3), respectively. The revised text reads as follows:

52.247–64 Preference for Privately Owned U.S.-Flag Commercial Vessels.

* * * * *

Preference for Privately Owned U.S.-Flag Commercial Vessels (June 2000)

* * * * *

(d) The Contractor shall insert the substance of this clause, including this paragraph (d), in all subcontracts or purchase orders under this contract.

* * * * *

[FR Doc. 00–10135 Filed 4–24–00; 8:45 am]

BILLING CODE 6820–EP–P

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Parts 6, 31, 32, and 42

[FAC 97–17; Item VI]

Federal Acquisition Regulation; Technical Amendments

AGENCIES: Department of Defense (DoD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Technical amendments.

SUMMARY: This document makes amendments to the Federal Acquisition Regulation in order to update references and make editorial changes.

EFFECTIVE DATE: April 25, 2000.

FOR FURTHER INFORMATION CONTACT: The FAR Secretariat, Room 4035, GS Building, Washington, DC 20405, (202) 501–4755.

List of Subjects in 48 CFR Parts 6, 31, 32, and 42

Government procurement.

Dated: April 13, 2000.

Edward C. Loeb,

Director, Federal Acquisition Policy Division.

Therefore, DoD, GSA, and NASA amend 48 CFR Parts 6, 31, 32, and 42 as set forth below:

1. The authority citation for 48 CFR Parts 6, 31, 32, and 42 continues to read as follows:

Authority: 40 U.S.C. 486(c); 10 U.S.C. chapter 137; and 42 U.S.C. 2473(c).

PART 6—COMPETITION REQUIREMENTS

2. In section 6.304, revise the second sentence of paragraph (a)(4) to read as follows:

6.304 Approval of the justification.

(a) * * *

(4) * * * This authority is not delegable except in the case of the Under Secretary of Defense for Acquisition, Technology, and Logistics, acting as the senior procurement executive for the Department of Defense.

* * * * *

PART 31—CONTRACT COST PRINCIPLES AND PROCEDURES

31.101 [Amended]

3. In section 31.101, in the last sentence, remove ''Acquisition and Technology'' and add in its place ''Acquisition, Technology, and Logistics''.

PART 32—CONTRACT FINANCING

4. Remove ''19__'' and add ''20__'' in the following places:

a. Section 32.411 in the Agreement for Special Bank Account; in paragraph (a) of Recitals; and after paragraph (e) of Covenants; and

b. Section 32.805(c) in the Acknowledgement.

32.502–4 [Amended]

5. In section 32.502–4 amend paragraph (a)(3) and (a)(4) by removing ''(a)(5)'' and adding in their places ''(a)(6)''.

PART 42—CONTRACT ADMINISTRATION AND AUDIT SERVICES

6. Remove ''19_'' and add ''20_'' in the following places:

a. Section 42.1204, in the Novation Agreement following paragraph (i) at paragraphs (a)(2), (a)(8) (twice), and in the Certificates following paragraph (b)(9); and

b. Section 42.1205, in the Change-of-Name Agreement following paragraph (b) at paragraph (a)(2); and in the Certificate following paragraph (b)(2).

[FR Doc. 00–10136 Filed 4–24–00; 8:45 am]

BILLING CODE 6820–EP–P

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Chapter 1

Federal Acquisition Regulation; Small Entity Compliance Guide

AGENCIES: Department of Defense (DoD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Small Entity Compliance Guide.

SUMMARY: This document is issued under the joint authority of the Secretary of Defense, the Administrator of General Services and the Administrator for the National Aeronautics and Space Administration. This *Small Entity Compliance Guide* has been prepared in accordance with Section 212 of the Small Business Regulatory Enforcement Fairness Act of 1996 (Public Law 104–121). It consists of a summary of rules appearing in Federal Acquisition Circular (FAC) 97–17 which amend the FAR. The rule marked with an asterisk (*) indicates that a regulatory flexibility analysis has been prepared in accordance with 5 U.S.C. 604. Interested parties may obtain further information regarding these rules by referring to FAC 97–17 which precedes this document. These documents are also available via the Internet at http://www.arnet.gov/far.

FOR FURTHER INFORMATION CONTACT: Laurie Duarte, FAR Secretariat, (202) 501–4225. For clarification of content, contact the analyst whose name appears in the table below.

LIST OF RULES IN FAC 97–17

Item	Subject	FAR case	Analyst
I	Competition under Multiple Award Contracts	1999–014	De Stefano.
II	Determination of Price Reasonableness and Commerciality*	1998–300 (98–300)	Olson.
III	Caribbean Basin Trade Initiative	2000–003	Linfield.
IV	Utilization of Indian Organizations and Indian-Owned Economic Enterprises	1999–301 (99–301)	Moss.
V	Ocean Transportation by U.S.-Flag Vessels	1998–604 (98–604)	Klein.

Item I—Competition under Multiple Award Contracts (FAR Case 1999–014)

This rule amends FAR 2.101, Subpart 16.5, and 37.201 to clarify what the contracting officer should consider when planning for and placing orders under multiple award contracts. This rule affects all contracting officers that award multiple award contracts or place task or delivery orders under them. The rule—

- Requires the contracting officer to include the name, address, telephone number, facsimile number, and e-mail address of the agency task and delivery order ombudsman in the solicitation and contracts if multiple awards will be made;
- Stresses key things the contracting officer must consider when deciding if a multiple award contract is appropriate, such as—
- Avoiding situations in which awardees specialize exclusively in one or a few areas within the statement of work;
- The scope and complexity of the contract requirement;
- The expected duration and frequency of task or delivery orders;
- The mix of resources a contractor must have to perform expected task or delivery order requirements; and
- The ability to maintain competition among the awardees throughout the contract's period of performance;
- Requires contracting officers to document their decision on whether or not to use multiple awards in the acquisition plan or contract file;
- Emphasizes the use of performance-based statements of work;
- Provides guidance on how to develop tailored order placement procedures;
- Requires contracting officers to consider cost or price as one of the factors in each selection decision for orders;
- Requires contracting officers to establish prices for each order that was not priced under the basic contract using the policies and methods in Subpart 15.4; and
- Requires contracting officers to document the order placement rationale and price in the contract file.

Item II—Determination of Price Reasonableness and Commerciality (FAR Case 1998–300) (98–300)

This final rule makes a minor editorial change to FAR 15.403–3 and converts the interim rule, which was published in FAC 97–14 as Item VI, as final. The editorial change amends the cross reference at 15.403–3(c)(1). The remainder of the interim rule that has been in effect since September 24, 1999, remains the same. The primary amendments made in the interim rule that are made final in this rule—

- Clarify procedures associated with obtaining information other than cost or pricing data when acquiring commercial items; and
- Establish that offerors who fail to comply with requirements to provide the information shall be ineligible for award.

Item III—Caribbean Basin Trade Initiative (FAR Case 2000–003)

This final rule amends FAR Parts 25.003, 25.400, 25.404, and the clause at 52.225–5, Trade Agreements, to implement the determination of the United States Trade Representative to renew the treatment of Caribbean Basin country end products as eligible products under the Trade Agreements Act, with the exception of end products from the Dominican Republic and Honduras. This rule applies only if an acquisition is subject to the Trade Agreements Act (see FAR 25.403). Offers of end products from the Dominican Republic and Honduras are no longer acceptable under such acquisitions unless the contracting officer does not receive any offers of U.S.-made end products or eligible products (designated, Caribbean Basin, or NAFTA country end products).

Item IV—Utilization of Indian Organizations and Indian-Owned Economic Enterprises (FAR Case 1999–301) (99–301)

This final rule amends FAR Subpart 26.1 and the clause at 52.226–1 to delete DoD-unique requirements relating to Indian Organizations and Indian-Owned Economic Enterprises from the FAR.

Item V—Ocean Transportation by U.S.-Flag Vessels (FAR Case 1998–604) (98–604)

This final rule amends FAR 47.504 and the clauses at 52.212–5, 52.213–4, and 52.247–64 to apply the preference for U.S.-flag vessels to contracts awarded using simplified acquisition procedures. This rule only affects civilian agency contracts that may involve ocean transportation of supplies subject to the Cargo Preference Act of 1954.

The rule also adds Alternate I of 52.247–64, Preference for Privately Owned U.S.-Flag Commercial Vessels, to the clause at 52.212–5, Contract Terms and Conditions Required to Implement Statutes or Executive Orders—Commercial Items. Alternate I applies when the supplies furnished under the contract must be transported exclusively in privately owned U.S.-flag vessels.

Dated: April 13, 2000.

Edward C. Loeb,

Director, Federal Acquisition Policy Division.

[FR Doc. 00–10137 Filed 4–24–00; 8:45 am]

BILLING CODE 6820–EP–P

Federal Register

Tuesday,
April 25, 2000

Part V

Department of the Interior

Fish and Wildlife Service

50 CFR Part 17

Endangered and Threatened Wildlife and Plants; Final Designation of Critical Habitat for the Spikedace and the Loach Minnow; Final Rule

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

RIN 1018–AF76

Endangered and Threatened Wildlife and Plants; Final Designation of Critical Habitat for the Spikedace and the Loach Minnow

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Final rule.

SUMMARY: We, the U.S. Fish and Wildlife Service (Service), designate critical habitat pursuant to the Endangered Species Act of 1973, as amended (Act), for the spikedace (*Meda fulgida*) and the loach minnow (*Tiarog*a (= *Rhinichthys*) *cobitis*).

We are designating occupied and unoccupied habitat that is essential for the recovery of these two species. We are designating as critical habitat a total of approximately 1,448 kilometers (km) (898 miles (mi)) of rivers and creeks for the two species. All of the total area is designated as critical habitat for the loach minnow, and approximately 1,302 km (807 mi) of that area is also designated as critical habitat for the spikedace. Critical habitat includes portions of the Gila, San Francisco, Blue, Black, Verde, and San Pedro Rivers, and some of their tributaries, in Apache, Cochise, Gila, Graham, Greenlee, Pima, Pinal, and Yavapai Counties in Arizona; and Catron, Grant, and Hidalgo Counties in New Mexico. Critical habitat includes the stream channels within the identified stream reaches and areas within these reaches potentially inundated by high flow events. These habitat areas provide for the physiological, behavioral, and ecological features (primary constituent elements) essential for the conservation of the spikedace and the loach minnow. Federal agencies proposing, authorizing, or funding actions that may affect the areas designated as critical habitat must consult with us on the effects of the proposed actions, pursuant to section 7(a)(2) of the Act.

DATES: The effective date of this rule is May 25, 2000.

ADDRESSES: You may inspect the complete file for this rule at the Arizona Ecological Services Office, U.S. Fish and Wildlife Service, 2321 W. Royal Palm Road, Suite 103, Phoenix, Arizona 85021, by appointment, during normal business hours.

FOR FURTHER INFORMATION CONTACT: Paul Barrett, Arizona Ecological Services Office, at the above address; telephone 602/640–2720, facsimile 602/640–2730.

SUPPLEMENTARY INFORMATION:

Background

Spikedace

The spikedace is a small, slim fish less than 80 millimeters (mm) (3 inches (in)) long. It is characterized by very silvery sides and by spines in the dorsal and pelvic fins (Minckley 1973). This species is found in moderate to large perennial streams, where it inhabits shallow riffles with sand, gravel, and rubble substrates, and moderate to swift currents and swift pools over sand or gravel substrates (Barber *et al.* 1970; Propst *et al.* 1986; Rinne 1991). Specific habitat for this species consists of shear zones where rapid flow borders slower flow, areas of sheet flow at the upper ends of mid-channel sand/gravel bars; and eddies at downstream riffle edges (Propst *et al.* 1986; Rinne and Kroeger 1988). Recurrent flooding and a natural hydrograph (physical conditions, boundaries, flow, and related characteristics of waters) are very important in maintaining the habitat of spikedace and in helping the species maintain a competitive edge over invading nonnative aquatic species (Propst *et al.* 1986; Minckley and Meffe 1987).

The spikedace was first collected in 1851 from the Rio San Pedro in Arizona and was described from those specimens in 1856 by Girard. It is the only species in the genus *Meda*. The spikedace was once common throughout much of the Gila River basin, including the mainstem Gila River upstream of Phoenix, and the Verde, Agua Fria, Salt, San Pedro, and San Francisco subbasins. It occupies suitable habitat in both the mainstream reaches and moderate-gradient perennial tributaries, up to about 2,000 meters (m) (6,500 feet(ft)) elevation (Miller 1960; Chamberlain 1904; Gilbert and Scofield 1898; Cope and Yarrow 1875).

Habitat destruction and competition and predation by nonnative aquatic species have severely reduced its range and abundance. It is now restricted to approximately 466 km (289 mi) of stream in portions of the upper Gila River (Grant, Catron, and Hidalgo Counties, NM); middle Gila River (Pinal County, AZ); lower San Pedro River (Pinal County, AZ); Aravaipa Creek (Graham and Pinal Counties, AZ); Eagle Creek (Graham and Greenlee Counties, AZ); and the Verde River (Yavapai County, AZ) (Anderson 1978; Bestgen, 1985; Bettaso *et al.* 1995; Jakle 1992; Marsh *et al.* 1990; Propst *et al.* 1985; Propst *et al.* 1986; Stefferud and Rinne 1996; Sublette *et al.* 1990). Its present range is only about 10–15 percent of the historical range and the status of the species within occupied areas ranges from common to very rare. At present, the species is common only in Aravaipa Creek and some parts of the upper Gila River in New Mexico.

Loach Minnow

The loach minnow is a small, slender, elongated fish less than 80 mm (3 in) long. It is olivaceous in color and strongly blotched with darker pigment. The mouth is oblique (slanting) and terminal, and the eyes are markedly directed upward (Minckley 1973). This species is found in small to large perennial streams, and uses shallow, turbulent riffles with primarily cobble substrate and swift currents (Minckley 1973; Propst and Bestgen 1991; Rinne 1989; Propst *et al.* 1988). The loach minnow uses the spaces between, and in the lee of (sheltered side), larger substrate for resting and spawning. It is rare or absent from habitats where fine sediments fill the interstitial spaces (small, narrow spaces between rocks or other substrate) (Propst and Bestgen 1991). Recurrent flooding and a natural hydrograph are very important in maintaining the habitat of loach minnow and in helping the species maintain a competitive edge over invading nonnative aquatic species (Propst *et al.* 1986; Propst and Bestgen 1991).

The loach minnow was first collected in 1851 from the Rio San Pedro in Arizona and was described from those specimens in 1865 by Girard. The loach minnow was once locally common throughout much of the Gila River basin, including the mainstem Gila River upstream of Phoenix, and the Verde, Salt, San Pedro, and San Francisco subbasins. It occupies suitable habitat in both the mainstream reaches and moderate-gradient perennial tributaries, up to about 2,500 m (8,200 ft) elevation. Habitat destruction and competition and predation by nonnative aquatic species have severely reduced its range and abundance. It is now restricted to approximately 676 km (419 mi) of stream in portions of the upper Gila River (Grant, Catron, and Hidalgo Counties, NM); the San Francisco and Tularosa Rivers and their tributaries Negrito and Whitewater Creeks (Catron County, NM); the Blue River and its tributaries Dry Blue, Campbell Blue, Little Blue, Pace, and Frieborn Creeks (Greenlee County, AZ and Catron County, NM); Aravaipa Creek and its tributaries Turkey and Deer Creeks (Graham and Pinal Counties, AZ); Eagle

Creek (Graham and Greenlee Counties, AZ); the White River (Apache, Gila, and Navajo Counties, AZ); and the Black River (Apache and Greenlee Counties, AZ) (Bagley *et al.* 1998; Bagley *et al.* 1996; Barber and Minckley 1966; Bettaso *et al.* 1995; Britt 1982; Leon 1989; Marsh *et al.* 1990; Propst 1996; Propst and Bestgen 1991; Propst *et al.* 1985; Springer 1995). The present range is only 15–20 percent of its historical range, and the status of the species within occupied areas ranges from common to very rare. At present, the species is common only in Aravaipa Creek, the Blue River, and limited portions of the San Francisco, upper Gila, and Tularosa Rivers in New Mexico.

Previous Federal Actions

The spikedace was included as a Category 1 candidate species in our December 30, 1982, Vertebrate Notice of Review (47 FR 58454). Category 1 included those taxa for which we had substantial biological information to support listing the species as endangered or threatened. We were petitioned on March 14, 1985, by the American Fisheries Society (AFS) and on March 18, 1985, by the Desert Fishes Council (DFC) to list the spikedace as threatened. Because the species was already under active petition by AFS, the DFC petition was considered a letter of comment. Our evaluation of the AFS petition revealed that the petitioned action was warranted, and we published a proposed rule to list this species as threatened with critical habitat on June 18, 1985 (50 FR 25390). We published the final rule listing the spikedace as a threatened species on July 1, 1986 (51 FR 23769). We did not finalize the proposed critical habitat designation at the time of listing but postponed the designation to allow us to gather and analyze economic data, in compliance with section 4(b)(2) of the Act.

We included the loach minnow as a Category 1 candidate species in the December 30, 1982, Vertebrate Notice of Review (47 FR 58454). On June 18, 1985 (50 FR 25380) we published a proposed rule to list this species as threatened with critical habitat. We published the final rule listing the loach minnow as a threatened species on October 28, 1986 (51 FR 39468). We did not finalize the proposed critical habitat designation at the time of listing but postponed the designation to allow us to gather and analyze economic data.

Section 4(a)(3) of the Act requires that, to the maximum extent prudent and determinable, the Secretary designate critical habitat at the time a species is determined to be endangered or threatened. Our regulations (50 CFR 424.12(a)(2)) state that critical habitat is not determinable if information sufficient to perform required analyses of the impacts of the designation is lacking or if the biological needs of the species are not sufficiently well known to permit identification of an area as critical habitat. At the time of listing of the spikedace and loach minnow, we found that critical habitat was not determinable because we had insufficient information to perform the required analyses of the impacts of the designation. As part of a settlement order of January 18, 1994, in *Greater Gila Biodiversity Project* v. *U.S. Fish and Wildlife Service,* CIV 93–1913 PHX/PGR, we finalized the critical habitat designations for both the spikedace and loach minnow on March 8, 1994 (59 FR 10906 and 10898 respectively).

Critical habitat for spikedace and loach minnow was set aside by court order in *Catron County Board of Commissioners, New Mexico* v. *U.S. Fish and Wildlife Service,* CIV No. 93–730 HB (D.N.M., 1994), aff'd, 75 F3d, 1429 (10th Cir. 1996). The court cited our failure to analyze the effects of critical habitat designation under the National Environmental Policy Act (NEPA) as its basis for setting aside critical habitat for the two species. The United States District Court for the District of Arizona recognized the effect of the *Catron County* ruling as a matter of comity (recognition given by the courts of one state or jurisdiction of the laws and judicial decisions of another) in the *Southwest Center for Biological Diversity* v. *Rogers,* CV 96–018–TUC–JMR (D. Ariz., Order of December 28, 1996). As a result of these court rulings, we removed the critical habitat description for spikedace and loach minnow from the Code of Federal Regulations on March 25, 1998 (63 FR 14378).

On September 20, 1999, the United States District Court for the District of New Mexico, *Southwest Center for Biological Diversity* v. *Clark,* CIV 98–0769 M/JHG, ordered us to complete designation of critical habitat for the spikedace and loach minnow by February 17, 2000. On October 6, 1999, the court amended the September 20, 1999 order to require us to make a critical habitat determination rather than requiring actual designation. We published our proposed rule to designate critical habitat in the **Federal Register** on December 10, 1999 (64 FR 69324).

On December 22, 1999, the court extended the deadline to complete our determination until April 21, 2000. Information regarding public notifications on the extension and hearing are given in the Summary of Comments and Recommendations section later in this rule.

We completed final recovery plans for spikedace and loach minnow in 1991 (Service 1991a, 1991b). We developed those plans with the assistance of the Desert Fishes Recovery Team and other biologists familiar with the species. This rule is based, in part, on recommendations offered in those recovery plans.

Critical Habitat

Critical habitat is defined in section 3(5)(A) of the Act as—(i) the specific areas within the geographic area occupied by a species, at the time it is listed in accordance with the Act, on which are found those physical or biological features (I) essential to the conservation of the species and (II) that may require special management considerations or protection and; (ii) specific areas outside the geographic area occupied by a species at the time it is listed, upon a determination that such areas are essential for the conservation of the species. The term ''conservation,'' as defined in section 3(3) of the Act, means ''to use and the use of all methods and procedures which are necessary to bring any endangered species or threatened species to the point at which the measures provided pursuant to this Act are no longer necessary'' (i.e., the species is recovered and removed from the list of endangered and threatened species).

Section 4(b)(2) of the Act requires that we base critical habitat proposals upon the best scientific and commercial data available, taking into consideration the economic impact, and any other relevant impact, of specifying any particular area as critical habitat. We may exclude areas from critical habitat designation if we determine that the benefits of exclusion outweigh the benefits of including the areas as critical habitat, provided the exclusion will not result in the extinction of the species. A discussion of our analysis under 4(b)(2) of the Act is provided in the Exclusion for Economic and Other Relevant Impacts section of this final rule.

Critical Habitat Designation

In designating critical habitat for spikedace and loach minnow, we reviewed the overall approach to the conservation of the species since the species' listing in 1986. Additionally, we solicited information from knowledgeable biologists and recommendations from the Desert Fishes Recovery Team. We also

reviewed the available information pertaining to habitat requirements of the two species, including public comments and other material received during critical habitat proposals and previous designations.

We also considered the measures identified as necessary for recovery, as outlined in the species' recovery plans. Due to the need for additional information on the two species, habitats, threats, controllability of threats, restoration potentials, and other factors, no quantitative criteria for delisting spikedace and loach minnow were set forth in the recovery plans. However, the recovery plans recommend protection of existing populations, enhancement and restoration of habitats occupied by depleted populations, and reestablishment of the two species into selected streams within their historical ranges.

Both recovery plans recommend designation of critical habitat for all stream reaches proposed as critical habitat in 1985, plus consideration of additional stream reaches. Except for Eagle Creek, the recovery plans do not identify the specific stream reaches to be considered for critical habitat designation due to the lack of information available at that time to support such identifications. The recovery plans do identify potential areas for reestablishment of spikedace and loach minnow including the San Pedro River and its tributaries, the San Francisco River, Mescal Creek (a middle Gila River tributary), and Bonita Creek. The recovery plans also recommend evaluation and selection of other potential sites. Recovery Team discussions since 1991 identified the need for critical habitat designation in Hot Springs and Redfield Canyons; Aravaipa, Eagle, Bonita, Beaver, West Clear, Campbell Blue, and Dry Blue Creeks; and the Gila, Verde, San Pedro, San Francisco, Blue, Tularosa, and White Rivers.

The designated critical habitat described below constitutes our best assessment of areas needed for the conservation of spikedace and loach minnow and is based on the best scientific and commercial information available. The designated areas are essential to the conservation of the species because they either currently support populations of spikedace and/or loach minnow, or because they currently have, or have the potential for developing, the necessary requirements for survival, growth, and reproduction of the spikedace and/or loach minnow (see description of primary constituent elements, below). All of the designated areas require special management consideration and protection to ensure their contribution to the species' recovery.

Because of these species' precarious status, mere stabilization of spikedace and loach minnow at their present levels will not achieve conservation. Recovery through protection and enhancement of the existing populations, plus reestablishment of populations in suitable areas of historical range, are necessary for their survival. The recovery plans for both species state, ''One of the most critical goals to be achieved toward recovery is establishment of secure self-reproducing populations in habitats from which the species has been extirpated'' (Service 1991a, 1991b). We, therefore, determine that the unoccupied areas designated as critical habitat are essential for the conservation of the species.

Important factors we considered in selecting areas designated in this rule include specific geographic area or complex of areas factors, such as size, connectivity, and habitat diversity, as well as rangewide recovery considerations such as genetic diversity and representation of all major portions of the species' historical ranges. We designated critical habitat complexes of sufficient size to provide habitat for spikedace and/or loach minnow populations large enough to be self-sustaining over time, despite fluctuations in local conditions so that recovery of these species is possible.

The ability of the fish to repopulate areas where they are depleted or extirpated is vital to recovery. Each complex contains interconnected waters so that spikedace and loach minnow can move between areas, at least during certain flows or seasons. Some complexes include stream reaches that do not have substantial spikedace- or loach minnow-specific habitat, but which provide migration corridors as well as play a vital role in the overall health of the aquatic ecosystem and, therefore, the integrity of upstream and downstream spikedace and loach minnow habitats. Each complex includes habitat with a moderate to high degree of complexity, thus providing suitable habitat for all life stages of spikedace and loach minnow under a wide range of habitat fluctuations.

The areas we selected for critical habitat designation include populations containing all known remaining genetic diversity within the two species, with the possible exception of the fish on certain tribal lands, which we believe are capable of persistence without critical habitat designation (see discussion under American Indian Tribal Rights, Federal-Tribal Trust Responsibilities, and the Endangered Species Act later in this rule). Areas selected for critical habitat designation include a representation of each major subbasin in the historical ranges of the species.

The designation includes all currently known populations of spikedace and loach minnow, except those on tribal lands. Uncertainty on upstream and downstream distributional limits of some populations may result in small areas of occupied habitat being excluded from the designation. However, based on the best available scientific information, we believe the areas included in this designation will be sufficient to conserve both species.

In order to provide for genetic variability for the loach minnow, the designation includes at least one remnant population for each major subbasin except the Verde subbasin, from which it has been completely extirpated. For spikedace, no remnant populations exist in the Agua Fria, Salt, and San Francisco/Blue subbasins. In those subbasins where no populations of spikedace or loach minnow currently exist, designated critical habitat includes currently unoccupied areas that have the potential and are important for restoration of the species, with the exception of the Agua Fria subbasin where no suitable areas are known to remain.

The inclusion of both occupied and currently unoccupied areas in the designated critical habitat for spikedace and loach minnow is in accordance with section 3(5)(A)(i) of the Act, which provides that areas outside the geographical area currently occupied by the species may meet the definition of critical habitat upon a determination that they are essential for the conservation of the species. Both spikedace and loach minnow are in danger of extinction, and their status is declining. In 1994, we determined that reclassification of spikedace and loach minnow from threatened to endangered was warranted; however, reclassification was precluded by other higher priority listing actions (59 FR 35303–35304). Although additional populations of loach minnow have been found since that time, they are small and their contribution to the status of the species is offset by declines in other populations. It is essential to protect all designated occupied areas as well as designated unoccupied areas that will provide habitat for reestablishment of the two species.

Both of the 1986 listing rules for spikedace and loach minnow conservatively estimated about 2,600 km (1,600 mi) of stream within the

species' historical ranges. Using newer techniques, a more current estimate is approximately 3,000 km (1,800 mi). This critical habitat designation includes approximately half that amount for loach minnow and less than half for spikedace. Although this is less than the historical ranges for both species, we believe that maintenance of viable spikedace and loach minnow populations within the designated areas can achieve recovery of these species.

For each stream reach designated, the up-and downstream-boundaries are described below. Critical habitat includes the stream channels within the identified stream reaches and areas within these reaches potentially inundated during high flow events. Where delineated, this will be the 100-year floodplain of the designated waterways as defined by the U.S. Army Corps of Engineers (COE). In areas where the 100-year floodplain has not been delineated or it is in dispute, the presence of alluvial soils (soils deposited by streams), obligate and facultative riparian vegetation (requiring and usually occurring in wetlands, respectively), abandoned river channels, or known high water marks can be used to determine the extent of the floodplain. This proposal takes into account the naturally dynamic nature of riverine systems and recognizes that floodplains are an integral part of the stream ecosystem. A relatively intact floodplain, along with the periodic flooding in a relatively natural pattern, are important elements necessary for long-term survival and recovery of spikedace and loach minnow. Among other things, the floodplain and its riparian vegetation provide space for natural flooding patterns and latitude for necessary natural channel adjustments to maintain appropriate channel morphology and geometry, provide nutrient input and buffering from sediment and pollutants, store water for slow release to maintain base flows, and provide protected side channels and other protected areas for larval and juvenile spikedace and loach minnow.

Within the delineated critical habitat boundaries, only lands containing, or which have the potential to develop, those habitat components that are essential for the primary biological needs of the species are considered critical habitat. Existing human-constructed features and structures within this area, such as buildings, roads, railroads, and other features, do not contain, and do not have the potential to develop, those habitat components and are not considered critical habitat.

Unless otherwise indicated, the following areas are designated as critical habitat for both spikedace and loach minnow (see the Regulation Promulgation section of this rule for exact descriptions of boundaries). The designation includes portions of 24 and 36 streams for spikedace and loach minnow, respectively; however, individual streams are not isolated, but are connected with others to form areas or ''complexes.'' The complexes include those that currently support populations of the fishes, as well as some currently unoccupied by the species, but which are considered essential for reestablishing populations to achieve recovery. The distances and conversions below are approximate; more precise estimates are provided in the Regulation Promulgation section of this rule.

1. Verde River complex, Yavapai County, Arizona. The Verde River complex is currently occupied by spikedace. Its tributary streams are believed to be currently unoccupied by either species. The Verde River complex is unusual in that a relatively stable thermal and hydrologic regime is found in the upper river and in Fossil Creek. Also, spikedace in the Verde River are genetically (Tibbets 1993) and morphologically (Anderson and Hendrickson 1994) distinct from all other spikedace populations. The continuing presence of spikedace and the existence of suitable habitat create a high potential for restoration of loach minnow to the Verde system.

a. Verde River—171 km (106 mi) of river extending from the confluence with Fossil Creek upstream to Sullivan Dam, but excluding lands belonging to the Yavapai Apache Tribe. Sullivan Dam is at the upstream limit of perennial flow in the mainstem Verde River. Perennial flow results from a series of river-channel springs and from Granite Creek. Below Fossil Creek, the Verde River has a larger flow and was thought at the time of the proposal to offer little suitable habitat for spikedace or loach minnow. However, this is historical range for both species and comments from the U.S. Forest Service (USFS) indicate this stretch of the river may offer substantial value for spikedace and loach minnow recovery. We will seek further information regarding the role of this portion of the Verde River for the species and may consider its designation in future potential revisions of the critical habitat.

b. Fossil Creek—8 km (5 mi) of creek extending from the confluence with the Verde River upstream to the confluence with an unnamed tributary. The lower portion of Fossil Creek contains all elements of spikedace and loach minnow habitat at present, except sufficient discharge. Discharge is currently diverted for hydropower generation at the Childs/Irving Hydropower site. However, operators of the Childs/Irving Hydropower project have agreed to provide enhanced flows into lower Fossil Creek, although the amount of that flow restoration is still under negotiation.

c. West Clear Creek—12 km (7 mi) of creek extending from the confluence with the Verde River upstream to the confluence with Black Mountain Canyon. The lower portion of West Clear Creek was historically known to support the spikedace and contains suitable, although degraded, habitat for the fishes. Gradient and channel morphology changes above Black Mountain Canyon make the upstream area unsuitable for either species.

d. Beaver/Wet Beaver Creek—33 km (21 mi) of creek extending from the confluence with the Verde River upstream to the confluence with Casner Canyon. Beaver Creek, and its upstream extension in Wet Beaver Creek, historically supported spikedace and loach minnow and contains suitable, although degraded, habitat. Above Casner Canyon, gradient and channel morphology changes make the stream unsuitable for either species.

e. Oak Creek—54 km (34 mi) of creek extending from the confluence with the Verde River upstream to the confluence with an unnamed tributary (near the Yavapai/Coconino County boundary). The lower portion of Oak Creek is part of the historical range of the two species and contains suitable, although degraded, habitat. Above the unnamed tributary, the creek becomes unsuitable for either species due to urban and suburban development and to increasing gradient and substrate size.

f. Granite Creek—2.3 km (1.4 mi) of creek extending from the confluence with the Verde River upstream to a spring. Below the spring, which supplies much of the base flow of Granite Creek, there is suitable habitat for loach minnow. As a perennial tributary of the upper Verde River, Granite Creek is considered an important expansion area for spikedace recovery.

2. Black River complex, Apache and Greenlee Counties, Arizona. In response to comments received on the suitability of this complex, we have not designated any areas within the complex as critical habitat for spikedace. The basis for this deletion from the proposed rule is biological, given that spikedace are not known to historically occupy areas at this elevation. However, the data on maximum elevation for spikedace are

not definitive and if information becomes available that differs from that currently available, the Black River complex may be reevaluated for spikedace critical habitat designation. The Salt River subbasin is a significant portion of spikedace historical range and has no existing population of spikedace. Large areas of the subbasin are unsuitable, either because of topography or because of reservoirs, stream channel alteration by humans, or overwhelming nonnative species populations.

The Salt River subbasin is a significant portion of loach minnow historical range, but loach minnow have been extirpated from all but a small portion in the Black and White Rivers. As the only remaining population of loach minnow on public lands in the Salt River basin, the Black River complex is considered vital to survival and recovery of the species.

a. East Fork Black River—Loach minnow only: 8 km (5 mi) of river extending from the confluence with the West Fork Black River upstream to the confluence with Deer Creek. This area is occupied by loach minnow, although the downstream extent of the population is not well known. This population was only discovered in 1996.

b. North Fork of the East Fork Black River—Loach minnow only: 18 km (11 mi) of river extending from the confluence with Deer Creek upstream to the confluence with an unnamed tributary. This area is occupied by loach minnow, although the upstream portion of the population is not well known. Above the unnamed tributary, the river has finer substrate and lacks riffle habitat, making it unsuitable for loach minnow.

c. Beyond Creek—Loach minnow only: 2.3 km (1.4 mi) of creek extending from the confluence with the East Fork Black River upstream to the confluence with an unnamed tributary. Although no loach minnow have been found in Boneyard Creek, they are probably present based on the pattern of occupation of lower portions of small tributaries in other parts of the loach minnow range.

d. Coyote Creek—Loach minnow only: 3 km (2 mi) of creek extending from the confluence with the East Fork Black River upstream to the confluence with an unnamed tributary. Loach minnow are thought to use the lower portion of this creek as part of the population in the East Fork Black River.

e. West Fork Black River—Loach minnow only: 10 km (6 mi) of river extending from the confluence with the East Fork Black River upstream to the confluence with Hay Creek. Above Hay Creek, the gradient and channel morphology are unsuitable for loach minnow. The West Fork Black River is not known to be occupied by loach minnow at present. However, it is considered important for conservation of the Black River remnant of the Salt River subbasin population.

3. Tonto Creek complex, Gila County, Arizona. Spikedace are known to have occupied Tonto Creek, and loach minnow are presumed to have done so although no records exist. Suitable habitat still exists, although degradation has occurred due to watershed uses, water diversion, agriculture, roads, and nonnative species introduction. The presence of substantial areas of USFS lands make this one of the most promising areas for reestablishment of spikedace and loach minnow in the Salt River subbasin.

a. Tonto Creek—

Spikedace: 47 km (29 mi) of creek extending from the confluence with Greenback Creek upstream to the confluence with Houston Creek. The influence of Roosevelt Lake below Greenback Creek, and gradient and substrate changes above Houston Creek, make these reaches unsuitable for spikedace.

Loach minnow: 70 km (44 mi) of creek extending from the confluence with Greenback Creek upstream to the confluence with Haigler Creek. The influence of Roosevelt Lake above Greenback Creek and changes in channel morphology above Haigler Creek make those portions of the stream unsuitable for loach minnow.

b. Greenback Creek—(8 mi) of creek extending from the confluence with Tonto Creek upstream to Lime Springs.

c. Rye Creek—2.1 km (1.3 mi) of creek extending from the confluence with Tonto Creek upstream to the confluence with Brady Canyon. This area of Rye Creek still supports a native fish community indicating high potential for spikedace and loach minnow reestablishment.

4. Middle Gila/Lower San Pedro/Aravaipa Creek complex, Pinal and Graham Counties, Arizona. This complex is occupied by spikedace with its population status ranging from rare to common. Aravaipa Creek supports some of the best and most protected spikedace and loach minnow populations due to special use designations on Bureau of Land Management (BLM) land, substantial ownership by The Nature Conservancy, and planned construction of fish barriers to prevent invasion of nonnative fish species. Enhancement of downstream habitats in the San Pedro and Gila Rivers would contribute substantially to recovery of these species.

a. Gila River—63 km (39 mi) of river extending from Ashurst-Hayden Dam upstream to the confluence with the San Pedro River. A small population of spikedace currently occupies this area. At Ashurst-Hayden Dam, all water is diverted into a canal. Above the confluence with the San Pedro River, flow in the Gila River is highly regulated by San Carlos Dam and becomes marginally suitable for either species. Below the confluence, the input of the San Pedro provides a sufficiently unregulated hydrograph which is a primary constituent element of loach minnow and spikedace critical habitat.

b. San Pedro River—21 km (13 mi) of river extending from the confluence with the Gila River upstream to the confluence with Aravaipa Creek. This area is currently occupied by spikedace. It provides an important connection between the existing population of loach minnow in Aravaipa Creek and the recovery habitat in the Gila River. Existing flow in the river comes primarily from surface and subsurface contributions from Aravaipa Creek.

c. Aravaipa Creek—45 km (28 mi) of creek extending from the confluence with the San Pedro River upstream to the confluence with Stowe Gulch. Aravaipa Creek supports a substantial population of spikedace and loach minnow. Stowe Gulch is the upstream limit of sufficient perennial flow for either species.

d. Turkey Creek—Loach minnow only: 4 km (3 mi) of creek extending from the confluence with Aravaipa Creek upstream to the confluence with Oak Grove Canyon. This creek is occupied by loach minnow. A substantial portion of the flow in Turkey Creek comes from the Oak Grove Canyon tributary.

e. Deer Creek—Loach minnow only: 4 km (3 mi) of creek extending from the confluence with Aravaipa Creek upstream to the boundary of the Aravaipa Wilderness. This stream is occupied by loach minnow. Suitable habitat extends to the Wilderness boundary.

5. Middle-Upper San Pedro River complex, Cochise, Graham, and Pima Counties, Arizona. None of the habitat in this complex is currently occupied by spikedace or loach minnow. However, the San Pedro River is the type locality of spikedace (locality where an individual of a new species is found that is chosen to serve as the basis for describing a new species or variety), and this complex contains important restoration areas.

a. San Pedro River—74 km (46 mi) of river extending from the confluence with Alder Wash (near Redfield) upstream to the confluence with Ash Creek (near the Narrows). This middle portion of the river is expected to have increasing surface flow due to restoration activities, including riparian and channel restoration, watershed improvements, and groundwater pumping reductions.

b. Redfield Canyon—22 km (14 mi) of creek extending from the confluence with the San Pedro River upstream to the confluence with Sycamore Canyon. Above Sycamore Canyon, permanent water becomes too scarce, and the habitat becomes unsuitable.

c. Hot Springs Canyon—19 km (12 mi) of creek extending from the confluence with the San Pedro River upstream to the confluence with Bass Canyon. Hot Springs Canyon is currently unoccupied but contains suitable habitat for restoration of spikedace and loach minnow.

d. Bass Canyon—5 km (3 mi) of creek extending from the confluence with Hot Springs Canyon upstream to the confluence with Pine Canyon. Bass Canyon is an extension of the Hot Springs Canyon habitat.

e. San Pedro River—60 km (37 mi) of river extending from the confluence with the Babocomari River upstream to the U.S./Mexico border. Although currently unoccupied, this area is identified in BLM (1993) planning documents as a restoration area for spikedace and loach minnow.

6. Gila Box/San Francisco River complex, Graham and Greenlee Counties, Arizona and Catron County, New Mexico. The only spikedace population remaining in the complex is in Eagle Creek. Substantial restoration potential for spikedace exists in the remainder of the complex. This complex has the largest area of habitat suitable for spikedace restoration.

Most of this complex is occupied by loach minnow, although the status varies substantially from one portion to another. Only Bonita Creek, Little Blue Creek, and the Gila River are currently unoccupied. The Blue River system and adjacent portions of the San Francisco River are the longest stretch of occupied loach minnow habitat unbroken by large areas of unsuitable habitat. Management of Federal lands and resources in the Gila Box, Bonita Creek, and the Blue River are highly compatible with recovery goals, giving restoration of spikedace and loach minnow in this complex a high likelihood of success.

a. Gila River—36 km (23 mi) of river extending from the Brown Canal diversion, at the head of the Safford Valley, upstream to the confluence with Owl Canyon, at the upper end of the Gila Box. The Gila Box is not known to currently support spikedace, but is considered to have a high potential for restoration of both species. Both above and below the Gila Box, the Gila River is highly modified by agriculture, diversions, and urban development.

b. Bonita Creek—24 km (15 mi) of creek extending from the confluence with the Gila River upstream to the confluence with Martinez Wash. Bonita Creek has suitable habitat for spikedace and loach minnow. Bonita Creek above Martinez Wash lies on the San Carlos Apache Reservation, which is excluded from this designation.

c. Eagle Creek—73 km (45 mi) of creek extending from the Phelps-Dodge Diversion Dam upstream to the confluence of Dry Prong and East Eagle Creeks, but excluding lands of the San Carlos Apache Reservation. Because the creek repeatedly flows from private or USFS lands into the San Carlos Apache Reservation and back, it is difficult to separately calculate stream mileages on tribal lands. Therefore, the above mileage covers the entire stream segment and is not corrected for tribal exclusions. Eagle Creek supports a small population of spikedace. Below the Phelps-Dodge Diversion Dam the creek is often dry; however comments received on the proposed rule suggest the stretch of Eagle Creek below the dam may offer sufficient connective value and habitat value to justify its inclusion in critical habitat. This area may be considered for critical habitat in future revisions of this designation.

d. San Francisco River—

Spikedace: 182 km (113 mi) of river extending from the confluence with the Gila River upstream to the confluence with the Tularosa River. Habitat above the Tularosa River does not appear suitable for spikedace. The San Francisco River was historically occupied by spikedace and is important habitat for restoration of the species.

Loach minnow: 203 km (126 mi) of river extending from the confluence with the Gila River upstream to the mouth of The Box, a canyon above the town of Reserve. Loach minnow in the San Francisco River vary from common to rare throughout the length of the river.

e. Tularosa River—Loach minnow only: 30 km (19 mi) of river extending from the confluence with the San Francisco River upstream to the town of Cruzville. Above Cruzville, the habitat becomes unsuitable due to the small size of the stream and a predominance of fine substrates.

f. Negrito Creek—Loach minnow only: 7 km (4 mi) of creek extending from the confluence with the San Francisco River upstream to the confluence with Cerco Canyon. Above this area, gradient and channel morphology make the creek unsuitable for loach minnow.

g. Whitewater Creek—Loach minnow only: 2 km (1 mi) of creek extending from the confluence with the San Francisco River upstream to the confluence with Little Whitewater Creek. Upstream gradient and channel changes make the portion above Little Whitewater Creek unsuitable for loach minnow.

h. Blue River—82 km (51 mi) of river extending from the confluence with the San Francisco River upstream to the confluence of Campbell Blue and Dry Blue Creeks. The Blue River is currently occupied by loach minnow but not currently occupied by spikedace, but planning among several State and Federal agencies for restoration of native fishes in the Blue River is under way.

i. Campbell Blue Creek—13 km (8 mi) of creek extending from the confluence of Dry Blue and Campbell Blue Creeks upstream to the confluence with Coleman Canyon. Above Coleman Canyon, the creek changes and becomes steeper and rockier, making it unsuitable for spikedace or loach minnow.

j. Dry Blue Creek—Loach minnow only: 5 km (3 mi) of creek extending from the confluence with Campbell Blue Creek upstream to the confluence with Pace Creek.

k. Pace Creek—Loach minnow only: 1.2 km (0.8 mi) of creek extending from the confluence with Dry Blue Creek upstream to a barrier falls.

l. Frieborn Creek—Loach minnow only: 1.8 km (1.1 mi) of creek extending from the confluence with Dry Blue Creek upstream to an unnamed tributary.

m. Little Blue Creek—5 km (3 mi) of creek extending from the confluence with the Blue River upstream to the mouth of a box canyon. Little Blue Creek is not currently occupied by spikedace or loach minnow, but contains suitable habitat and is considered an important restoration area for both species.

7. Upper Gila River complex, Grant, Catron, and Hidalgo Counties, New Mexico. This complex is occupied throughout by spikedace and loach minnow and contains the largest remaining populations of both species. It is considered to represent the ''core'' of what remains of the species. Because of the remoteness of the area, there is a relatively low degree of habitat threats.

a. Gila River—164 km (102 mi) of river extending from the confluence with Moore Canyon (near the Arizona/New Mexico border) upstream to the confluence of the East and West Forks. Spikedace and loach minnow are known to occupy the river into the Duncan-Virden Valley (Rinne 1999b).

b. East Fork Gila River—42 km (26 mi) of river extending from the confluence with the West Fork Gila River upstream to the confluence of Beaver and Taylor Creeks.

c. Middle Fork Gila River—

Spikedace: 12 km (8 mi) of river extending from the confluence with the West Fork Gila River upstream to the confluence with Big Bear Canyon.

Loach minnow: 19 km (12 mi) of river extending from the confluence with the West Fork Gila River upstream to the confluence with Brothers West Canyon

d. West Fork Gila River—12 km (8 mi) of river extending from the confluence with the East Fork Gila River upstream to the confluence with EE Canyon. This lower portion of the West Fork is occupied by spikedace and loach minnow, but the river becomes unsuitable above EE Canyon due to gradient and channel morphology.

Primary Constituent Elements

The habitat features (primary constituent elements) that provide for the physiological, behavioral, and ecological requirements essential for the conservation of a species are described at 50 CFR 424.12 and include, but are not limited to, the following:

—Space for individual and population growth, and for normal behavior;

—Food, water, or other nutritional or physiological requirements;

—Cover or shelter;

—Sites for breeding, reproduction, or rearing of offspring; and

—Habitats that are protected from disturbance or are representative of the historical geographical and ecological distributions of a species.

Spikedace

We determined the primary constituent elements for spikedace from studies on their habitat requirements and population biology including, but not limited to, Barber *et al.* 1970; Minckley 1973; Anderson 1978; Barber and Minckley 1983; Turner and Taffanelli 1983; Barrett *et al.* 1985; Propst *et al.* 1986; Service 1989; Hardy *et al.* 1990; Douglas *et al.* 1994; Stefferud and Rinne 1996; Velasco 1997. These primary constituent elements include:

1. Permanent, flowing, unpolluted water;

2. Living areas for adult spikedace with slow to swift flow velocities in shallow water with shear zones where rapid flow borders slower flow, areas of sheet flow at the upper ends of mid-channel sand/gravel bars, and eddies at downstream riffle edges;

3. Living areas for juvenile spikedace with slow to moderate flow velocities in shallow water with moderate amounts of instream cover;

4. Living areas for larval spikedace with slow to moderate flow velocities in shallow water with abundant instream cover;

5. Sand, gravel, and cobble substrates with low to moderate amounts of fine sediment and substrate embeddedness;

6. Pool, riffle, run, and backwater components present in the aquatic habitat;

7. Low stream gradient;

8. Water temperatures in the approximate range of 1–30 °C (35–85 °F), with natural diurnal and seasonal variation;

9. Abundant aquatic insect food base;

10. Periodic natural flooding;

11. A natural, unregulated hydrograph or, if the flows are modified or regulated, then a hydrograph that demonstrates an ability to support a native fish community; and

12. Habitat devoid of nonnative aquatic species detrimental to spikedace, or habitat in which detrimental nonnative species are at levels which allow persistence of spikedace.

The areas we are designating as critical habitat for spikedace provide the above primary constituent elements or will be capable, with restoration or removal of detrimental nonnative species, of providing them. All of the designated areas require special management considerations or protection to ensure their contribution to the species' recovery.

Loach minnow

We determined the primary constituent elements for loach minnow from studies on their habitat requirements and population biology including, but not limited to, Barber and Minckley 1966; Minckley 1973; Schreiber 1978; Britt 1982; Turner and Taffanelli 1983; Service 1988; Rinne 1989; Hardy *et al.* 1990; Vives and Minckley 1990; Propst and Bestgen 1991; Douglas *et al.* 1994; Velasco 1997. These primary constituent elements include:

1. Permanent, flowing, unpolluted water;

2. Living areas for adult loach minnow with moderate to swift flow velocities in shallow water with gravel, cobble, and rubble substrates;

3. Living areas for juvenile loach minnow with moderate to swift flow velocities in shallow water with sand, gravel, cobble, and rubble substrates;

4. Living areas for larval loach minnow with slow to moderate velocities in shallow water with sand, gravel, and cobble substrates and abundant instream cover;

5. Spawning areas for loach minnow with slow to swift flow velocities in shallow water with uncemented cobble and rubble substrate;

6. Low amounts of fine sediment and substrate embeddedness;

7. Riffle, run, and backwater components present in the aquatic habitat;

9. Low to moderate stream gradient;

10. Water temperatures in the approximate range of 1–30°C (35–85°F), with natural diurnal and seasonal variation;

11. Abundant aquatic insect food base;

12. Periodic natural flooding;

13. A natural unregulated hydrograph or, if flows are modified or regulated, then a hydrograph that demonstrates an ability to support a native fish community; and

14. Habitat devoid of nonnative aquatic species detrimental to loach minnow, or habitat in which detrimental nonnative species are at levels which allow persistence of loach minnow.

The areas we are designating as critical habitat for loach minnow provide the above primary constituent elements or will be capable, with restoration or removal of detrimental nonnative species, of providing them. All of the designated areas require special management considerations or protection to ensure their contribution to the species' recovery.

Land Ownership

Table 1 shows land ownership for areas of critical habitat that are currently occupied by one or both species, and Table 2 shows land ownership for critical habitat that is unoccupied. A general description of land ownership in each complex follows.

TABLE 1.—STREAM DISTANCES IN KILOMETERS (MILES) OF CRITICAL HABITAT OCCUPIED BY EITHER LOACH MINNOW OR SPIKEDACE BY COUNTY AND OWNERSHIP

	Private	State	Federal	Other Gov.	Total
Apache Co., AZ	0	0	11.3 (7.0)	0	11.3 (7.0)
Cochise Co., AZ	0	0	0	0	0
Gila Co., AZ	0	0	0	0	0
Graham Co., AZ	10.3 (6.4)	0	4.7 (2.9)	26.1 (16.2)	41.1 (25.5)
Greenlee Co., AZ	45.0 (27.9)	2.6 (1.6)	109.5 (67.9)	0	157.1 (97.4)
Pima Co., AZ	0	0	0	0	0
Pinal Co., AZ	58.5 (36.3)	6.8 (4.2)	48.2 (29.9)	1.0 (0.6)	114.5 (71.0)
Yavapai Co., AZ	56.5 (35.0)	5.8 (3.6)	52.2 (32.4)	*1.6 (1.0)	116.1 (72)
AZ Total	170.0 (105.4)	15.2 (9.4)	225.9 (140.4)	28.7 (17.8)	440.1 (272.9)
Catron Co., NM	79.0 (49.0)	5.3 (3.3)	145.2 (90.0)	0.8 (0.5)	230.3 (142.8)
Grant Co., NM	53.2 (33.0)	2.1 (1.3)	72.9 (45.2)	0	128.2 (79.5)
Hidalgo Co., NM	10.6 (6.6)	0	7.3 (4.5)	0	17.9 (11.1)
NM Total	142.8 (88.6)	7.4 (4.6)	225.4 (139.7)	0.8 (0.5)	376.4 (233.4)
Total	312.8 (194.0)	22.6 (14.0)	451.3 (280.4)	29.5 (18.3)	816.5 (506.3)

*This area is included in the total critical habitat mileages, but is excluded by description.

TABLE 2.—STREAM DISTANCES IN KILOMETERS (MILES) OF CRITICAL HABITAT UNOCCUPIED BY EITHER LOACH MINNOW OR SPIKEDACE BY COUNTY AND OWNERSHIP

	Private	State	Federal	Other Gov.	Total
Apache Co., AZ	3.4 (2.1)	0	24.1 (15.0)	0	27.6 (17.1)
Cochise Co., AZ	17.3 (10.7)	5.6 (3.5)	61.2 (38.0)	0	84.1 (52.2)
Gila Co., AZ	12.0 (7.5)	0	81.6 (50.6)	0	93.6 (58.1)
Graham Co., AZ	21.1 (13.1)	13.9 (8.6)	50.1 (31.1)	5.5 (3.4)	90.6 (56.2)
Greenlee Co., AZ	30.6 (19.0)	3.9 (2.4)	18.9 (11.7)	0	53.4 (33.1)
Pima Co., AZ	70.6 (43.8)	3.2 (2.0)	0	0	73.9 (45.8)
Pinal Co., AZ	0	0	0	0	0
Yavapai Co., AZ	55.3 (34.3)	7.1 (4.4)	*95.2 (59.0)	0	*157.6 (97.7)
AZ Total	210.3 (130.5)	33.7 (20.9)	331.1 (205.4)	5.5 (3.4)	580.8 (360.2)
Catron Co., NM	0	0	0	0	0
Grant Co., NM	4.0 (2.5)	0	47.9 (29.7)	0	51.9 (32.2)
Hidalgo Co., NM	0	0	0	0	0
NM Total	4.0 (2.5)	0	47.9 (29.7)	0	51.9 (32.2)
Total	214.3 (133.0)	33.7 (20.9)	379.0 (235.1)	5.5 (3.4)	632.7 (392.4)

*Yavapai and Gila Counties share a border at Fossil Creek, the mileage for which is included in Gila County and not here.

1. Verde River complex—There are large blocks of USFS lands in the upper and lower reaches, with significant areas of private ownership in the Verde Valley and along the lower portions of Oak, Beaver, and West Clear Creeks. There are also lands belonging to the National Park Service (NPS), Arizona State Parks, and the Arizona Game and Fish Department (AGFD).

2. Black River complex—The ownership is predominantly USFS, with a few small areas of private land.

3. Tonto Creek complex—Land here is mostly USFS on the upper end, but significant areas of private ownership occur in the lower reaches.

4. Middle Gila/Lower San Pedro/Aravaipa Creek complex—This area includes extensive BLM land as well as extensive private land, some State of Arizona lands, and a small area of allotted land used by the San Carlos Apache Tribe.

5. Middle-Upper San Pedro complex—The BLM is the largest landowner, and there are large areas of private ownership and smaller areas of State of Arizona lands.

6. Gila Box/San Francisco River complex—This complex contains extensive USFS land, some BLM land, and scattered private, State of Arizona, and New Mexico Department of Game and Fish (NMDGF) lands. A significant portion of Bonita Creek runs through the City of Safford.

7. Upper Gila River complex—The largest areas are on USFS land, with small private inholdings. There are large areas of private lands in the Cliff-Gila Valley, and the BLM administers significant stretches upstream of the Arizona/New Mexico border. There are also small areas of NMDGF, NPS, and State of New Mexico lands.

Significant private owners, with lands scattered among several of the designated critical habitat complexes, include Phelps-Dodge Corporation and The Nature Conservancy. A large number of other private landowners hold lands within the designated areas. Private lands are primarily used for grazing and agriculture, but also include towns, small-lot residences, and industrial areas.

Effect of Critical Habitat Designation

The Act requires Federal agencies to ensure that actions they fund, authorize, or carry out do not destroy or adversely modify critical habitat to the extent that the action appreciably diminishes the value of the critical habitat for the survival and recovery of the species.

Individuals, organizations, States, local and Tribal governments, and other non-Federal entities are only affected by the designation of critical habitat if their actions occur on Federal lands, require a Federal permit, license, or other authorization, or involve Federal funding.

Section 7(a) of the Act requires Federal agencies to evaluate their actions with respect to any species that is proposed or listed as endangered or threatened and with respect to its proposed or designated critical habitat. Regulations implementing this interagency cooperation provision of the Act are codified at 50 CFR part 402. Section 7(a)(4) of the Act and regulations at 50 CFR 402.10 require Federal agencies to confer with us on any action that is likely to jeopardize the continued existence of a proposed species or to result in destruction or adverse modification of proposed critical habitat. If a species is subsequently listed or critical habitat is designated, then section 7(a)(2) requires Federal agencies to ensure that activities they authorize, fund, or carry out are not likely to jeopardize the continued existence of such a species or destroy or adversely modify its critical habitat. To that end, if a Federal action may affect a listed species or its critical habitat, the responsible Federal agency must enter into consultation with us. Regulations at 50 CFR 402.16 also require Federal agencies to reinitiate consultation in instances where we have already reviewed an action for its effects on a listed species if critical habitat is subsequently designated.

Section 4(b)(8) of the Act requires us, to the extent practicable, to include in any proposed or final regulation that designates critical habitat a description and evaluation of those activities involving a Federal action that may adversely modify such habitat or that may be affected by such designation. Activities that may destroy or adversely modify critical habitat include those that alter the primary constituent elements (defined above) to an extent that the value of critical habitat for both the survival and recovery of the spikedace or loach minnow is appreciably reduced.

To properly portray the effects of critical habitat designation, we must first compare the section 7 requirements for actions that may affect critical habitat with the requirements for actions that may affect a listed species. Section 7 prohibits actions funded, authorized, or carried out by Federal agencies from jeopardizing the continued existence of a listed species or destroying or adversely modifying the listed species' critical habitat. According to regulations at 50 CFR 402.02, actions likely to ''jeopardize the continued existence'' of a species are those that would appreciably reduce the likelihood of the species' survival and recovery. Actions likely to ''destroy or adversely modify'' critical habitat are those that would appreciably reduce the value of critical habitat for the survival and recovery of the listed species.

Common to both definitions is an appreciable detrimental effect on both survival and recovery of a listed species. Given the similarity of these definitions, actions likely to destroy or adversely modify critical habitat would almost always result in jeopardy to the species concerned, particularly when the area of the proposed action is occupied by the species. In those cases, it is highly unlikely that additional modifications to the action would be required as a result of designating critical habitat. However, critical habitat may provide benefits towards recovery when designated in areas currently unoccupied by the species.

Actions on Federal lands that we reviewed in past consultations on spikedace and loach minnow include land management plans; land acquisition and disposal; road and bridge construction, maintenance, and repair; water diversion and development; reservoir construction; off-road vehicle use; livestock grazing and management; fencing; prescribed burning; powerline construction and repair; recovery actions for spikedace and loach minnow; game fish stocking; timber harvest; access easements; flood repair and control; groundwater development; channelization; and canal and other water transport facility construction and operation. Federal agencies involved with these activities include the USFS, BLM, Service, and Bureau of Reclamation.

Federal actions taken on private, State, or tribal lands on which we consulted in the past for spikedace and loach minnow include irrigation diversion construction and maintenance; flood repair and control; game fish stocking; timber harvest; water diversion and development; reservoir construction; water quality standards; and riparian habitat restoration. Federal agencies involved with these activities include the Natural Resources Conservation Service, Bureau of Reclamation, Environmental Protection Agency, Bureau of Indian Affairs, Indian Health Services, Federal Emergency Management Agency, and the Service.

Federal actions involving issuance of permits to private parties on which we consulted in the past for spikedace and loach minnow include issuance of National Pollution Discharge Elimination System permits by the Environmental Protection Agency and issuance of permits under section 404 of the Clean Water Act for dredging and filling in waterways by the COE. Private actions for which 404 permits were sought include road and bridge construction, repair and maintenance; flood control and repair; and water diversion construction and repair.

Since the original listing of spikedace and loach minnow in 1986, only three consultations ended in a finding that the proposed action would likely jeopardize the continued existence of spikedace and/or loach minnow. An additional four proposed actions received draft findings of jeopardy, but for three of those, the requests for consultation were withdrawn and the fourth is still in progress. For the three jeopardy findings, we developed reasonable and prudent alternatives that included changes to projects, and recommended or required measures to reduce or eliminate impacts to spikedace and loach minnow and to minimize the take of individuals. These alternatives removed the likelihood of jeopardy to the species.

As stated above, designation of critical habitat in areas occupied by spikedace or loach minnow is not expected to result in regulatory burden above that already in place due to the presence of the listed species. However, areas designated as critical habitat that are not currently occupied by the species may require protections similar to those provided to occupied areas under past consultations.

Any Federal activity that would significantly and detrimentally alter the minimum flow or the natural flow regime of any of the stream segments listed above could destroy or adversely modify the critical habitat of either or both species. Such activities include, but are not limited to, groundwater pumping, impoundment, water diversion, and hydropower generation.

Any Federal activity that would significantly and detrimentally alter watershed characteristics of any of the 41 stream segments listed above could destroy or adversely modify the critical habitat of either or both species. Such activities include, but are not limited to, vegetation manipulation, timber harvest, road construction and maintenance, human-ignited prescribed fire, livestock grazing, mining, and urban and suburban development.

Any Federal activity that would significantly and detrimentally alter the channel morphology of any of the 41

stream segments listed above could destroy or adversely modify the critical habitat of either or both species. Such activities include, but are not limited to, channelization, impoundment, road and bridge construction, deprivation of substrate source, destruction and alteration of riparian vegetation, reduction of available floodplain, removal of gravel or floodplain terrace materials, and excessive sedimentation from mining, livestock grazing, road construction, timber harvest, off-road vehicle use, and other watershed and floodplain disturbances.

Any Federal activity that would significantly and detrimentally alter the water chemistry in any of the 41 stream segments listed above could destroy or adversely modify the critical habitat of either or both species. Such activities include, but are not limited to, release of chemical or biological pollutants into the surface water or connected groundwater at a point source or by dispersed release (non-point).

Any Federal activity that would introduce, spread, or augment nonnative aquatic species could destroy or adversely modify the critical habitat of either or both species. Such activities include, but are not limited to, stocking for sport, aesthetics, biological control, or other purposes; construction and operation of canals; and interbasin water transfers.

In some cases designation of critical habitat may assist in focusing conservation activities by identifying areas that contain essential habitat features (primary constituent elements), regardless of whether they are currently occupied by the listed species. This identification alerts the public and land management agencies to the importance of an area in the conservation of that species. Critical habitat also identifies areas that may require special management considerations or protection.

If you have questions regarding whether specific activities are likely to constitute destruction or adverse modification of critical habitat, contact the Field Supervisor, Arizona Ecological Services Office (see **ADDRESSES** section). Requests for copies of the regulations on listed wildlife and inquiries about prohibitions and permits may be addressed to the U.S. Fish and Wildlife Service, Division of Endangered Species, P.O. Box 1306, Albuquerque, New Mexico 87103 (telephone 505–248–6920; facsimile 505–248–6788).

Economic Analysis

Section 4(b)(2) of the Act requires that we designate critical habitat on the basis of the best scientific and commercial information available and consider the economic and other relevant impacts of designating a particular area as critical habitat. We based this designation on the best available scientific information, including the recommendations in the species' recovery plans. We utilized the economic analysis, and took into consideration comments and information submitted during the public hearing and comment period, to make this final critical habitat designation. We may exclude areas from critical habitat upon a determination that the benefits of such exclusions outweigh the benefits of specifying such areas as critical habitat. We cannot exclude such areas from critical habitat when such exclusion will result in the extinction of the species. We completed an economic analysis, which is available for public review. Send your requests for copies of the economic analysis to the Arizona Ecological Services Office (see **ADDRESSES** section) or visit our website at http://ifw2es.fws.gov/arizona.

Exclusion for Economic and Other Relevant Impacts

Based on comments provided by the BLM, our Economic Analysis identified Bonita Creek as an area with potential for high economic impacts associated with the designation of critical habitat for the spikedace and loach minnow. The analysis concluded that ''Immediate action is required in case of flood control damage to [the City of Safford's] water supply in order to minimize the cost of repair. The cost of a stable, alternative water supply is prohibitive. There is a high probability of substantial cost to the City of Safford from the inability to repair storm damage to their water supply in a timely manner due to the requirement of a section 7 consultation if the Creek is designated critical habitat.''

Bonita Creek is an area that is necessary for the recovery of the probable unique spikedace gene pool presently occupying Eagle Creek. Furthermore, 50 CFR section 402.05 of our regulations provides for expedited consultation pursuant to section 7 of the Act during emergencies. Finally, Bonita Creek is occupied by the razorback sucker (*Xyrauchen texanus*), a species listed as endangered pursuant to the Act. Thus, consultation on water supply repair has and will occur regardless of the designation of critical habitat for the spikedace and loach minnow. In fact, in 1994, the Federal Emergency Management Agency consulted with us pursuant to section 7 of the Act regarding repairs to the City of Safford's water supply system in Bonita Creek. We concluded that repairs to the water system were not likely to jeopardize the continued existence of the razorback sucker. Impacts to the razorback sucker would be very similar to the impacts to the spikedace and thus, including Bonita Creek as critical habitat is not likely to change our section 7 consultation conclusions. For these reasons we conclude the benefits of designating Bonita Creek outweigh the benefits of excluding it from critical habitat designation.

Based on comments provided by Arizona Game and Fish Department (AGFD), our Economic Analysis identified the possible discontinuation of trout stocking programs as a potential for high economic loss to affected county economies. We are presently consulting on the stocking program, but because trout are not known to conflict with the recovery of either spikedace or loach minnow, we do not expect any impacts to the trout stocking program or county economies. Therefore, we conclude the benefits of designating critical habitat for the spikedace and loach minnow outweigh the benefits of excluding all areas where trout stocking occurs.

No tribal reservation lands are included in this designation, as discussed in more detail below. Nor are we including the Black River as critical habitat for spikedace in this final determination because information received during the comment period leads us to conclude that it is not suitable for spikedace recovery. The Black River is, however, designated as critical habitat for the loach minnow. After gathering economic data and conducting an analysis of the lands proposed for critical habitat designation, we determined that no other areas should be excluded from this designation for economic or other relevant considerations.

American Indian Tribal Rights, Federal-Tribal Trust Responsibilities, and the Endangered Species Act

In accordance with the Presidential Memorandum of April 29, 1994, we believe that, to the maximum extent possible, fish, wildlife, and other natural resources on tribal lands are better managed under tribal authorities, policies, and programs than through Federal regulation wherever possible and practicable. Based on this philosophy, we believe that, in most cases, designation of tribal lands as critical habitat provides very little benefit to threatened and endangered species. This is especially true where the habitat is occupied by the species and is therefore already subject to protection under the Act. Conversely,

such designation is often viewed by tribes as unwarranted and unwanted intrusion into tribal self governance, thus compromising the government-to-government relationship essential to achieving our mutual goals of managing for healthy ecosystems upon which the viability of threatened and endangered species populations depend.

As stated previously, section 4(b)(2) of the Act requires us to consider the economic and other relevant impacts of critical habitat designation, and authorizes us to exclude areas from designation upon finding that the benefits of exclusion outweigh the benefits of including the areas as critical habitat, so long as excluding those areas will not result in the extinction of the species concerned. In the proposed rule for this critical habitat designation we solicited information from interested parties on the anticipated economic and other relevant impacts of designation.

We identified stream reaches on the Fort Apache Indian Reservation (home of the White Mountain Apache Tribe), the San Carlos Apache Reservation, and the Yavapai Apache Reservation as possibly appropriate biologically for the designation of critical habitat, i.e., they contain the primary constituent elements of the species' critical habitat. The San Carlos, Tonto, White Mountain, and Yavapai Apache tribes all addressed this issue in their comments on the proposed rule. Below we evaluate the benefits of excluding these tribal lands from critical habitat and the benefits of including these areas. In addition, we assess the anticipated effects that designation of non-tribal lands can be expected to have on tribal trust resources, such as water deliveries.

1. Designation of Critical Habitat on Indian Reservations

The White Mountain Apache Tribe, which has currently occupied loach minnow habitat and potential loach minnow and potential spikedace habitat within its reservation boundaries, produced a Native Fishes Management Plan. After reviewing this plan, we determined that the tribe's management of the species will provide substantial protection for the relevant habitat areas, and that designation of critical habitat will provide little or no additional benefit to the species, particularly since the areas are occupied by the loach minnow.

Conversely, designation of critical habitat would be expected to adversely impact our working relationship with the Tribe, the maintenance of which has been extremely beneficial in implementing natural resource programs of mutual interest. In 1994 the Fish and Wildlife Service and White Mountain Apache Tribe signed a Statement of Relationship which formalized our commitment to work cooperatively with the tribe in promoting healthy ecosystems. Since that agreement we have worked cooperatively with the tribe to the significant benefit of threatened and endangered species. In addition to managing the habitats of the spikedace and loach minnow, these programs include management of the threatened Mexican spotted owl, management of healthy populations of threatened Apache trout, and other natural resource programs. After weighing the benefits of critical habitat designation on the Fort Apache Indian Reservation against the adverse impact on our cooperative natural resource programs, we find that the benefits of excluding Fort Apache Indian Reservation lands, in terms of the spikedace and loach minnow, as well as ecosystems in general, outweigh the benefits of including those areas as critical habitat.

In the case of the San Carlos Indian Reservation, we again believe that the principle of tribal self-governance is the overriding consideration and believe that Federal regulation through critical habitat designation will be viewed as an unwarranted and unwanted intrusion into tribal natural resource programs. This, in turn, will likely hamper our ability to continue important programs upon which endangered and threatened species depend. For example, we are currently cooperating with the San Carlos Apache Tribe on a very important spring restoration program for the benefit of the severely imperiled Gila topminnow. We also are cooperating on programs to benefit the endangered southwestern willow flycatcher, the Gila chub (a candidate for listing under the Act), and the Mexican spotted owl, among others. Given our belief that they are the entity best able to manage habitat for the spikedace and loach minnow, the fact that the areas considered for designation are already occupied by listed species and therefore receive protection under the Act, and the anticipated adverse impacts to our cooperative relationship that may result from critical habitat designation, we believe that the benefits of excluding areas of the San Carlos Apache Reservation from critical habitat outweigh the negligible benefits of designating those areas.

The Yavapai Apache Tribe holds approximately one river-mile of potential critical habitat on the Verde River, other parts of which are designated as critical habitat. We believe that current management is adequate as evidenced by the fact that the spikedace still occurs there, and that little benefit would accrue from critical habitat designation since the species is already protected under the Act. We further believe that tribal management of this reservation land would ultimately be of greater benefit to spikedace and loach minnow than would the designation of this small segment, since we hope to maintain a cooperative working relationship with the Yavapai Apache.

After carefully balancing the considerations involved in determining whether lands should be included or excluded from the designation of critical habitat, we determined that the benefits of promoting self-determination, allowing the tribes to develop conservation management on their lands, and the continued cooperative relationship in managing threatened and endangered species and their habitats, outweigh the benefits to be obtained from designating critical habitat for these two species. Exclusion of these lands from the designation will not result in extinction of either species.

These decisions were made in compliance with Public Law 106–113, which prohibits us from using any of our appropriated funds to implement two provisions of Secretarial Order 3206 (Secretarial Order)—(1) Principle 3(C)(ii), which prohibits the imposition of conservation restrictions involving incidental take if the conservation purposes of the restriction can be achieved by reasonable regulation of non-Indian activities, and (2) Appendix section 3(B)(4), which concerns the designation of critical habitat and includes the requirement that we consult with affected tribes. The Presidential Memorandum of April 29, 1994 also requires that we consult with tribes when contemplating regulations that may affect them, and the Act requires that we consider the relative benefits versus potential adverse consequences of critical habitat designations on all lands. Thus, our consultation with the tribes and our assessment of the ability to achieve conservation of spikedace and loach minnow without regulation of tribal lands were undertaken independently of the provisions of Secretarial 3206.

2. Possible Effects on Tribal Trust Resources From Critical Habitat Designation on Non-tribal Lands

We recognized that the Salt River Reservation, Fort McDowell Reservation, and Gila River Indian Reservation are all located downstream from designated critical habitat and depend on water deliveries from

upstream sources. We do not anticipate that designation of critical habitat on non-tribal lands will result in any impact on tribal trust resources or the exercise of tribal rights. Many of the tribal lands either have major impoundments on their reservations or lie below major impoundments, and the release of water from the impoundments is regulated by court decree or other actions which may be non-discretionary. Since non-discretionary actions are not subject to consultation under the Act, designation of critical habitat is unlikely to have any effect on water deliveries to the reservations. However, in complying with our responsibility to communicate with all tribes potentially affected by the designation, we solicited information during the comment period on potential effects to tribes or tribal resources that might result from this critical habitat designation. The comments are discussed below; none pointed out specific effects not considered in developing this rule.

Summary of Comments and Recommendations

In the December 10, 1999, proposed rule, all interested parties were requested to submit comments or information that might bear on the designation of critical habitat for the spikedace and loach minnow (64 FR 69324). The comment period was initially scheduled to close on January 14, 2000. Subsequently, the courts allowed us additional time in which to prepare and publish this final designation of critical habitat. Therefore on January 12, 2000, we announced in the **Federal Register** (65 FR 1845) extension of the comment period to February 14, 2000, and scheduling of an additional public hearing. In addition, we notified 525 interested parties of the comment period extension and additional public hearing by letter.

We contacted all appropriate State and Federal agencies, Tribes, county governments, scientific organizations, and other interested parties by mail and invited them to comment on the proposed rule as well as the draft economic analysis and Environmental Assessment. In addition, newspaper notices inviting public comment were published in the following newspapers in Arizona and New Mexico: The Arizona Republic, Tucson Citizen, Arizona Daily Star (Tucson), Albuquerque Tribune, Albuquerque Journal, Sierra Vista Herald, Eastern Arizona Courier, Santa Fe New Mexican, Silver City Daily Press, White Mountain Independent, The Verde Independent, Sedona Red Rock News, Cottonwood Journal Extra, and Camp Verde Journal. The inclusive dates of these publications were December 4–15, 1999, for the initial comment period and announcement of the first three public hearings.

We posted copies of the proposed rule, draft environmental assessment, and draft economic analysis on our Internet site and distributed them for display and inspection at public libraries in Prescott, Chino Valley, Camp Verde, City Of Cottonwood, Sedona, Sierra Vista, Huachuca City, Safford City and Graham County, Clifton-Greenlee County, Kearny, Tucson, Alpine, Greer, Mammoth, and San Manuel in Arizona; and Silver City and Reserve Village Hall in New Mexico.

We held hearings in Silver City, New Mexico, and Thatcher, Arizona, on December 15, 1999, and Camp Verde, Arizona, on December 16, 1999. Notices appeared in the previously named newspapers between January 13 and 19, 2000 to announce the extension of the public comment period until February 14, 2000, and the scheduling of an additional public hearing in Sierra Vista, Arizona on January 31, 2000. The December 10, 1999 (64 CFR 69324), and January 12, 2000 (65 CFR 1845), notices also announced the time and location of the four public hearings. A total of 495 people registered at the public hearings including 32 in Silver City, 111 in Thatcher, 24 in Camp Verde, and 328 in Sierra Vista. Transcripts of these hearings are available for inspection (see **ADDRESSES** section).

We requested four ichthyologists familiar with the species to peer review the proposed critical habitat designation. However, only two responded by the close of the comment period. One responded that as a member of the Desert Fishes Recovery Team he has provided data, advice, and general counsel and supports the proposal on biological grounds. The second also generally supported the proposed critical habitat, but cited a few areas he suggested be added to the proposal as well as some technical corrections to the document.

We received a total of 126 oral and 315 written comments during the comment period. Of those oral comments, 15 supported critical habitat designation and 111 were opposed to designation. Of the written comments, 35 supported designation, 263 were opposed to it, and 17 provided additional information only, or were nonsubstantive or not relevant to the proposed designation. Oral and written comments were received from the government of Mexico, one Congressional representative, two state legislators, two Federal agencies, three State agencies, nine local governments, five Tribal governments, and 297 private organizations, companies, or individuals.

All comments received were reviewed for substantive issues and new data regarding critical habitat and the biology and status of spikedace and loach minnow. Comments of similar nature are grouped into 7 issues relating specifically to critical habitat. These are addressed in the following summary.

Issue 1: Procedural and Legal-Compliance

The following comments and responses involve issues related to public involvement in the designation process and compliance with the Act and other laws, regulations, and policies. These comments do not include those addressing economic issues nor compliance with the NEPA, which are addressed under Issues 3 and 5, respectively.

Comment 1a: The comment period was unreasonably short for the public to fully evaluate the proposed rule and associated documents; more public hearings were needed.

Our Response: The initial public comment period was shorter than the 60 days required under our regulations (50 CFR 424.16(c)(2)). However, the initial schedule we developed to complete this designation was the result of a court-ordered deadline. The court originally ordered us to publish this final designation by February 17, 2000. To meet this deadline and allow time for analysis of public comments and preparation of the final rule, we needed to close the public comment period on January 14, 2000, resulting in an initial comment period of 36 days. Fortunately, both the plaintiffs and the court agreed to a 60-day extension of the deadline. As a result, we announced in the **Federal Register** (65 FR 1845) on January 12, 2000, as well as local newspapers, that we were extending the comment period until February 14, 2000, resulting in a total comment period of 65 days, thus exceeding the 60-day regulatory requirement.

The Act requires that at least one public hearing be held if requested. We held four hearings; thus we exceeded the statutory requirements.

Comment 1b: The Service should prepare additional drafts of various documents and provide them to the public for review.

Our Response: Drafts of both the economic analysis and Environmental Assessment associated with this designation were made available to the

public for review and comment. The final versions of those documents are available to the public (see **ADDRESSES**).

Comment 1c: The public should have the opportunity to review comments provided by selected experts during the peer review process.

Our Response: All comments submitted are part of the administrative record and, as such, are open to public review. It is also important to note that oral testimony at the public hearings, written comments from the general public, and comments received during the peer review process are considered equally in making our final determination.

Comment 1d: Designation of portions of the rivers unoccupied by either of these fish species is outside the Service's authority and contrary to the requirements of the Act.

Our Response: The definition of critical habitat in section 3(5)(A) of the Act includes ''''specific areas *outside* the geographical area occupied by a species at the time it is listed, upon a determination that such areas are essential for the conservation of the species.'' The term ''conservation'', as defined in section 3(3) of the Act, means ''to use and the use of all methods and procedures which are necessary to bring any endangered species or threatened species to the point at which the measures provided pursuant to this Act are no longer necessary'' (i.e., the species is recovered and removed from the list of endangered and threatened species).

After weighing the best available information, including the species' recovery plans (U.S. Fish and Wildlife Service 1991a, 1991b), we conclude that the areas designated by this final rule that lie outside the geographical area occupied by the species at the time they were listed are essential for the recovery of the species and subsequent removal from the list of endangered and threatened species. We also note that the total area designated only represents approximately 45 and 50 percent of the areas believed historically occupied by the spikedace and loach minnow, respectively.

Comment 1e: The Act states that areas outside the area occupied at the time of listing can be designated only if those areas are determined essential to the conservation of the species. The Service instead considered whether areas were occupied at the time of critical habitat designation. Therefore, some areas currently occupied, but that were not occupied at the time of listing, were not subject to the higher standard required of for unoccupied habitat (i.e., that those areas are essential for the conservation of the species).

Our Response: The issue is moot since we determined that all areas designated as critical habitat are essential for conservation of these two species.

Comment 1f: The critical habitat proposal represents virtually all suitable or potentially suitable habitat within the species' historical ranges. The Act prohibits such broad designation.

Our Response: Section 3(5)(C) of the Act states that, except in those circumstances determined by the Secretary, critical habitat shall not include the entire geographical area which can be occupied by an endangered or threatened species. In this case critical habitat is designated in an estimated 45 and 50 percent of spikedace and loach minnow historical ranges, respectively. With proper restoration and management, much of the historical range would be suitable. The Secretary of the Interior has determined that the areas designated are essential to conserve these species.

Comment 1g: Private lands should be excluded from critical habitat designation.

Our Response: Section 4(b)(2) of the Act states ''The Secretary shall designate critical habitat, and make revisions thereto, under subsection (a)(3) on the basis of the best scientific data available and after taking into consideration the economic impact, and any other relevant impact, of specifying any particular area as critical habitat.'' The Act does not require nor suggest that private lands should be excluded from designation, unless we find that the economic or other relevant impacts outweigh the benefit of critical habitat designation. For further information please see our discussion under Issue 3: Economic Comments. Designation of critical habitat on private lands would only have an effect in cases where Federal funding or a Federal permit is required for a project. For further information please see our discussion under Issue 7: Effects of Designation.

Comment 1h: The critical habitat designation is based on insufficient data.

Our Response: Section 4(b)(2) of the Act states ''The Secretary shall designate critical habitat, and make revisions thereto, under subsection (a)(3) on the basis of the best scientific data available . . .'' Our recommendation is based on a considerable body of information on the biology and status of the species, as well as the effects of land-use practices on their continued existence. We agree that much remains to be learned about these species, and should credible, new information become available which contradicts the basis for this designation, we will reevaluate our analysis and, if appropriate, propose to modify this critical habitat designation. We have considered the best scientific information available at this time, as required by the Act. Please see more specific information in our response to comment 4i.

Comment 1i: We should not designate critical habitat until specific recovery goals are set.

Our Response: The Act does not allow the indefinite suspension of the determination of critical habitat. Thus, in general, we cannot delay the determination of critical habitat until final recovery plans are produced. However, in the cases of the spikedace and loach minnow, recovery plans were finalized in 1991. These plans recommend that critical habitat be designated for these species. The plans also recommend maintenance of occupied habitat and establishment of new populations within the species' historical ranges. In addition, we have continued working with the Desert Fishes Recovery Team since the plans were finalized, and believe this critical habitat designation is consistent with the recommendations of those scientists. We have thus met the requirement that the designation be based on the best scientific information available.

Comment 1j: In relying on the Desert Fishes Recovery Team to identify which streams and rivers should be designated as critical habitat, the Service violated both the ESA and the Federal Advisory Committee Act (FACA). The ESA exempts Recovery Teams from FACA only for the purpose of developing and implementing recovery plans, not advising on critical habitat designation. *Alabama-Tombigbee Rivers Coalition* v. *Department of Interior*, 26 F.3d 1103 (11th Cir. 1994).

Our Response: Section 4(f)(2) of the Endangered Species Act provides the Fish and Wildlife Service the authority to appoint recovery teams, which may consist of non-Federal personnel, for the purpose of assisting in the development and implementation of recovery plans. That section also exempts recovery teams from the provisions of FACA.

In the case of the spikedace and loach minnow, the Desert Fishes Recovery Team (Recovery Team) oversaw development of recovery plans for the two species, and suggested mechanisms to facilitate plan implementation in order to achieve the plans' conservation goals. Both recovery plans recommend designating critical habitat for the two species as a mechanism for recovery, and the Recovery Team has provided

suggestions on which areas should be included in such designation. The Recovery Team was acting appropriately within its role in advising on recovery plan implementation, and our consideration of Recovery Team recommendations is consistent with the Act's requirement that critical habitat determination be based on the best scientific information available.

This commenter cited *Alabama-Tombigbee Rivers Coalition* v. *Department of Interior*, 26 F.3d 1103 (11th Cir. 1994), as authority for its assertion that the Recovery Team's FACA exemption was limited. However, *Alabama-Tombigbee* did not involve a Recovery Team; it involved an ''Advisory Team'' assembled to advise the Service on whether listing of a species was warranted. The ''Advisory Team'' was never referred to as a Recovery Team nor was there any indication in the opinion that anyone asserted that the Advisory Team was exempt from FACA under the Act.

Comment 1k: Contrary to statements in the proposed rule, the Service was not ordered to designate critical habitat. Rather, the amended court order of October 6, 1999, stated that the Service was to publish a final determination with respect to whether and to what extent critical habitat shall be designated. Thus, the Service should reconsider whether and to what extent critical habitat should be designated.

Our Response: The commenter is correct that we cited the original court order of September 20, 1999, which ordered us to designate critical habitat, and that a subsequent court order amended the original order to require us to make a critical habitat determination rather than requiring actual designation. In complying with the amended court order, we made the determination that critical habitat designation is prudent for these two species, and that the areas proposed are essential for the species' conservation and thus the appropriate extent of critical habitat. The language in this final rule clarifies the distinction mentioned by the commenter, although such a correction has no material effect on the designation.

Comment 1l: We failed to comply with the Farm Land Protection Act of 1981.

Our Response: The stated purpose of the Farmland Protection Act of 1981, Public Law 97–98, 95 Stat. 1343, 7 USC 4201 *et seq.*, was ''to minimize the extent to which Federal programs contribute to the unnecessary and irreversible conversion of farmland to nonagricultural uses * * * ''; however, the Farmland Protection Act recognized that there might be instances where other national interests could override this provision. While Federal statutes may frequently appear to have conflicting provisions, it is the presumed intent of Congress that, to the extent possible, all laws be read in a way which allows them to be applied together. We do not read the Farmland Protection Act and the Endangered Species Act to be incompatible since this designation will not result in conversion of farmland to nonagricultural uses and nor any significant restrictions on agricultural uses.

Issue 2: Biological Concerns

The following comments and responses involve issues related to the biological basis for the designation.

Comment 2a. The proposed critical habitat designation is substantially greater than critical habitat designated in 1994 and is thus excessive.

Our Response: The 1994 designations of critical habitat were based on proposals published in 1985. Since 1985 there have been substantial additions to the information on spikedace and loach minnow, their habitat needs, and the existing condition and potential of most of the streams in the Gila River basin. In addition, in 1985 the concept of critical habitat was less developed than it is now, 15 years later. Evolution of thinking, along with a number of court decisions regarding the definition and uses of critical habitat, have led to the recognition that critical habitat may provide the most benefits to listed species when it is applied to unoccupied areas essential for recovery.

Of the areas included in this critical habitat designation for spikedace that were not included in the 1994 designation, 20 percent are based on new information about the species, its distribution, abundance, and habitat; 10 percent are to include sparsely occupied areas omitted from the 1985 proposal; 69 percent are currently unoccupied recovery areas and connecting corridors; and, 1 percent is an adjustment due to the increased accuracy of mileage calculations using Geographic Information System (GIS) capability. Of the areas included in this critical habitat designation for loach minnow that were not included in the 1994 designation, 15 percent are based on new information; 18 percent are sparsely occupied areas omitted from the 1985 proposal; 65 percent are currently unoccupied recovery areas and connecting corridors; and, 2 percent are an adjustment for GIS figures.

Comment 2b: Neither spikedace nor loach minnow require the protection of the Act. The discovery of new populations since their listing should cause both species to be delisted or at least negate the need for critical habitat designation.

Our Response: Both spikedace and loach minnow are listed as threatened. Recovery plans were finalized for both species in 1991. In 1994, we reevaluated the threats to the species and determined the status of the species was even more precarious than we had previously concluded, even with the discovery of new populations, and that they warranted listing as endangered. However, higher listing priorities, e.g., reviewing and listing imperiled species that are afforded no protection under the Act, have precluded us from reclassifying the spikedace and loach minnow as endangered. The status of both spikedace and loach minnow are declining.

Comment 2c: The Service should limit critical habitat to aquatic and riparian zones.

Our Response: In this final rule we have further clarified the areas within designated reaches as the stream channels and areas potentially inundated by high flow events. Where delineated, this is the 100-year floodplain of the designated waterways. This constitutes the present and reasonable future aquatic and riparian zones of the designated rivers and streams. Furthermore, within the delineated critical habitat boundaries, only lands containing, or which are likely to develop, those habitat components that are essential for the primary biological needs of the species are considered critical habitat. Existing human-constructed features and structures within this area, such as buildings, roads, railroads, and other features, do not contain, and do not have the potential to develop, those habitat components and are not considered critical habitat.

Comment 2e: One commenter questioned the validity of designating sufficient critical habitat to protect all known remaining genetic diversity within the two species with the exception of fish on certain tribal lands.

Our Response: The exclusion of tribal lands is discussed in the section titled American Indian Tribal Rights, Federal-Tribal Trust Responsibilities, and the Endangered Species Act, and in section 6 of these responses to comments.

The range, numbers, and presumably genetic diversity of the species have already been much reduced. The remaining populations exhibit distinct genetic differences (Tibbets 1992, Tibbets 1993, A. Tibbets, pers. com., March 2000). Noss and Cooperrider (1994) identified reduced genetic

diversity as one of the factors which predispose small populations to extinction. Therefore, to conserve and recover the fishes to the point where they no longer require the protection of the Act and may be delisted, it is important to maintain and protect all remaining genetically diverse populations of these two species.

Comment 2f: The Service did not provide sufficient information on the criteria used for including or omitting certain reaches in the critical habitat designation.

Our Response: Please see the ''Critical Habitat Designation'' section of this Final Rule. As described in the section titled ''B. Primary Constituent Elements'', we identified the habitat features (primary constituent elements) that provide for the physiological, behavioral, and ecological requirements essential for the conservation of each species. Within the historical range of the species, we identified areas which either provide the primary constituent elements or will be capable, with restoration, of providing them and which met the criteria discussed under Critical Habitat Designation in this rule. Then, based in part on recommendations from species experts including those on the Desert Fishes Recovery Team, we selected qualifying reaches within these areas necessary for the conservation of the fishes.

Comment 2g: The definition of the lateral extent of critical habitat is undefined. The vague description of lateral extent, along with the discussion of what activities might adversely affect critical habitat, could be interpreted as including the entire watershed of the streams designated as critical habitat. In addition, there are areas within what appears to be the designation that do not contain the constituent elements, such as buildings or parking lots, that should not be included in the critical habitat.

Our Response: We have clarified the lateral extent of the critical habitat in this rule. Although activities within the watershed may affect the critical habitat, it is not our intent to designate areas outside of the floodplain as critical habitat. We have also clarified that existing human-constructed features that do not meet the constituent elements are excluded by definition from the critical habitat designation.

Issue 3: Economic Analysis.

There were numerous comments that addressed economic issues.

Issue 3a: Will critical habitat designation result in more consultations than would have occurred without the critical habitat designation?

Our Response: We expect that the designation of critical habitat will result in more consultations, especially for activities which may affect unoccupied habitat. If these consultations result in any increased costs to the applicant, these costs will be attributable to critical habitat designation. However, consultations are only required of Federal agencies for those projects with a Federal nexus.

Issue 3b: Are private lands affected by critical habitat designation if there is no Federal nexus?

Our Response: Under Section 7 of the Endangered Species Act, private lands are not impacted by the designation of critical habitat unless there is a Federal nexus.

Issue 3c: If permit requirements from a Federal agency change, is that a critical habitat impact?

Our Response: There are many reasons why a permit requirement may change. Each Federal agency has enabling legislation that determines its mission and, consequently, what activities can occur on the land it manages, or for what activities the agency can otherwise issue permits. As more information becomes available about the environment, public activities on Federal land, or activities for which Federal agencies otherwise issue permits, may require changes to permit requirements. These may be due to the Federal agency's own legislation. In those cases, we have attributed any impact to the legislation requiring the change and not the Endangered Species Act. If permit requirements change on unoccupied habitat as a result of a consultation with us, then the impact would be attributable to critical habitat designation.

Issue 3d: Critical habitat designation will drive away current and future businesses.

Our Response: There is a common misconception that critical habitat designation will reduce business activity. Without a Federal nexus, there is no direct impact of critical habitat designation on private activities or businesses. In addition, restrictions resulting from the listing of the species are not attributable to critical habitat designation. In areas currently occupied by the species, little or no economic impact is expected to result from critical habitat designation. In unoccupied areas, some economic impacts may result. Our economic analysis considers those anticipated impacts, including effects on businesses. However, we believe that the benefits of designating critical habitat outweigh the benefits of excluding areas from designation.

Issue 3e: Impacts on land uses next to the river were not evaluated in the economic analysis.

Our Response: At the time of releasing the economic analysis of critical habitat designation, very little information was available to us on land uses next to the rivers. Subsequently, some Federal and State agencies have provided us with their management activities and expected changes relative to critical habitat. This new information is reflected in the final economic analysis.

Issue 3f: The draft economic analysis only addresses 5 of the streams when the proposal includes many more streams.

Our Response: The table with the analysis of 5 streams comes from study of the previous critical habitat designation. It was included in the draft economic analysis to illustrate the kinds of economic impacts for which we were seeking additional information. All streams in the final designation have been evaluated in the final economic analysis.

Issue 3g: The Service must prepare an economic analysis that considers the total effect of listing and critical habitat.

Our Response: Congress has stated that the listing of a species be based solely on biological considerations. As a result, an economic analysis of the listing of a species is not undertaken as part of the listing process. The current rule being considered is the designation of critical habitat and thus only economic and other relevant impacts of specifying any particular area as critical habitat are considered. A recent court decision on designation of critical habitat for the southwestern willow flycatcher *(Empidonax extimus trailli) New Mexico Cattle Growers et al.* v. *USFWS et al.,* CIV 98–0275 LH/DJs—ACE (D. Ariz. 1999) (on appeal) affirmed our approach of considering only the economic and other relevant impacts of critical habitat designation above and beyond those associated with listing the species.

Issue 3h: The Regulatory Flexibility Act and the Small Business Regulatory Enforcement Fairness Act analyses were inadequate.

Our Response: There were substantial data gaps that precluded a full analysis of the impact on small entities. A more complete analysis is in the administrative record for this designation, and is available for public review (see **ADDRESSES**).

Issue 3i: There needs to be a takings implication assessment completed.

Our Response: A taking implications assessment is in the administrative record for this designation, and is

available for public review (see **ADDRESSES**).

Issue 3j: The economic analysis lacks dollar amounts for the impact on Agriculture, Recreation, Roads, Water Supply, and Private Development on page 26.

Our Response: The table on page 26 of the draft economic analysis was reproduced from an earlier study and the blank entries were in the original document. We provide a more complete accounting of the impacts in the final economic analysis.

Issue 3k: No economic analysis was done for the State of New Mexico.

Our Response: The revised economic analysis includes information about Grant County, the only county in the State of New Mexico that contains critical habitat unoccupied by either the spikedace or the loach minnow.

Issue 3l: An incorrect baseline was used for the economic analysis.

Our Response: The baseline we used considered the Federal actions expected to occur in the absence of critical habitat. Thus, all Section 7 consultations with Federal agencies and other restrictions resulting from the listing of the species are considered part of the baseline and are not attributable to critical habitat designation. The only economic impacts attributable to critical habitat designation would be those resulting from Federal activities in unoccupied designated critical habitat and only those activities likely to destroy or adversely modify critical habitat.

Issue 3m: The use of IMPLAN is not appropriate below the State level.

Our Response: IMPLAN was not used in the draft economic analysis. However, the data sets that come with IMPLAN describe the economic activity at the county level, which provide a useful summary of the industries in the affected counties.

Issue 4: Site-Specific Issues.

The following comments and responses involve issues related to the inclusion or exclusion of specific streams reaches or our methods for selecting appropriate areas for designation as critical habitat.

Comment 4a: Several commenters pointed out errors in mileages, locations, or descriptions in the proposed rule.

Our Response: Corrections have been made in the final rule to reflect these comments, where appropriate.

Comment 4b: Commenters believed that the areas listed in table 3 (below) were unsuitable for designation or they recommended some areas for exclusion from designation.

TABLE 3.—EXCLUSION OF REMOVAL RECOMMENDATIONS IN COMMENTS

Stream reach	Not suitable for species	Not occupied by species	Conflict with economic, social, or other uses	Insufficient information	Nonnative species conflict	Not essential or no benefit to species	Special mgmt. consideration not needed	Detrimental to species mgmt.
Complex 1								
Verde River above Valley	X	X			X			X
Verde River in Valley	X	X	X		X	X		
Verde River below Valley	X	X			X	X		
Granite Creek				X	X			
Oak Creek	X	X	X	X	X	X		
Beaver Creek	X	X		X	X	X		
West Clear Creek	X	X	X	X	X	X		
Fossil Creek	X	X	X					
Complex 2								
West Fork Black River	X	X	X		X			
East Fork Black River	X		X		X			
Coyote Creek	X		X	X	X	X		
Boneyard Creek	X		X	X	X	X		
Complex 3								
Tonto Creek		X	X	X		X	X	X
Rye Creek	X	X	X	X	X	X	X	X
Greenback Creek		X	X	X		X	X	X
Complex 4								
Middle Gila River	X	X	X		X			X
Lower San Pedro River	X	X			X			X
Aravaipa Creek							X	X
Turkey Creek		X		X		X		
Deer Creek		X		X		X		
Complex 5								
Middle San Pedro River	X	X	X	X	X	X	X	X
Redfield Canyon		X		X		X		
Hot Springs & Bass Canyons	X	X		X		X		
Upper San Pedro River	X	X	X	X	X	X	X	X

TABLE 3.—EXCLUSION OF REMOVAL RECOMMENDATIONS IN COMMENTS—Continued

Stream reach	Not suitable for species	Not occupied by species	Conflict with economic, social, or other uses	Insufficient information	Nonnative species conflict	Not essential or no benefit to species	Special mgmt. consider-ation not needed	Detrimental to species mgmt.
Complex 6								
Gila River at Box	X		X		X	X		
Bonita Creek	X	X	X	X	X	X	X	X
Eagle Creek	X	X	X	X	X	X	X	X
Blue River	X		X	X	X			X
Little Blue Creek		X		X				
Campbell Blue Creek				X	X			
Dry Blue, Frieborn, & Pace Creeks				X		X		
San Francisco River in AZ	X	X	X		X	X	X	
San Francisco River in NM			X			X		
Tularosa River						X	X	
Negrito and Whitewater Creeks						X		
Complex 7								
Upper Gila River below Mogollon Creek	X	X[1]	X		X	X	X	X
Upper Gila River above Mogollon Creek	X	X[1]			X	X	X	X
West Fork Gila River	X				X	X	X	X
East Fork Gila River	X				X	X	X	X
Middle Fork Gila River	X	X			X	X	X	X

[1] In part.

Our Response: We carefully considered the information provided in the comments regarding requested exclusions and removals. Two streams were removed from the spikedace designation, as described previously. Areas suggested for exclusion that were retained, and our rationales, are provided in responses 4b1 through 4b19.

Comment 4b1: There are no records of occurrence of spikedace and loach minnow in the Little Blue River, Redfield, Bass, and Hot Springs Canyons; Granite, Boneyard, Coyote, Greenback, Rye, Oak, and Bonita Creeks: the East, West, and Main Forks of the Black River; and the Gila Box. Therefore, these areas are not part of the historical range.

Our Response: Because early collections of fishes from the Gila Basin were rare and occurred mostly along primary exploration and settlement travel routes, the complete distribution of most of our native fishes cannot be documented with specific museum specimens and records. By the time sampling of native fish became common in the 1960's and 1970's many of the streams had been modified or subjected to temporary adverse circumstances (such as total diversion of water or mine spills resulting in water-quality problems) to the point that many of the native fishes had already been extirpated. Thus, we can never know precisely what we have lost. Therefore, we must use the best available information to reconstruct the most probable composition of the historical ranges of spikedace and loach minnow. If a stream is (1) within the Gila basin; and (2) contains suitable or potential habitat for the species, or historical records indicate it once sustained such habitat, and there are records of those species from nearby areas, and there is no other reason to believe that the two species could not have occurred there (i.e. an impassable natural barrier); then those areas are considered to be part of the historical range of the species.

Comment 4b2: Deer, Turkey, Wet Beaver/Beaver, and West Clear Creeks have no records of spikedace and/or loach minnow.

Our Response: Deer and Turkey Creeks, tributaries of Aravaipa Creek, have recent records of loach minnow (USBLM 1995, University of Arizona museum specimens No. ASU 13517). The Beaver Creek complex has historical records of both spikedace and loach minnow from 1938 (Minckley 1993). West Clear Creek has historical records of spikedace from 1937 (Minckley 1993).

Comment 4b3: Spikedace are extirpated from the middle Gila River and any spikedace found there were displaced by flooding from Aravaipa Creek.

Our Response: Spikedace were recorded from the middle Gila River historically (Minckley 1973) and as recently as 1991 (Jakle 1992) and are not considered extirpated. Some commenters believe the 1991 record of one spikedace in the middle Gila River near Florence represents a fish displaced during some unspecified flood event from Aravaipa Creek, 50 miles upstream, and does not represent a population in the Gila River. However, in the year preceding the October sampling, there was only one marginally significant flood, which occurred in March (USGS discharge records). It is unlikely that such a relatively minor flood would displace spikedace 50 miles downstream and that the displaced fish would be surviving 6 months later in what the commenters assume is habitat unsuitable to support a resident population of spikedace. In addition, it is even more unlikely that, at the precise time of the only sampling conducted that year, the displaced fish would be present at one of the 7 sites sampled, totaling less than 1 mile of the 50 mile reach. Given the sparse sampling in the middle Gila, it is far more likely that the 1991 spikedace represents a small population of

spikedace either permanently resident in that area or which occupy the area in a periodically fluctuating pattern dependent upon conditions. Documentation of such small populations is very difficult and often results in false declarations of extirpation (Mayden and Kuhajda 1996).

Comment 4b4: Spikedace are extirpated from the Middle Fork Gila River.

Our Response: Spikedace have not been recorded at a long-term study site on the middle Fork Gila River since 1995 (Propst and Stefferud, unpub. data). No surveys of the rest of the stream have been conducted recently and the present status of the spikedace in the Middle Fork is uncertain. Failure to record spikedace for four years at a fixed sampling station may indicate a low population level but does not support a declaration of extirpation from the entire stream.

Comment 4b5: Spikedace are extirpated from the Verde River.

Our Response: Spikedace continue to be recorded from the Verde River, although since 1996 they have been very rare, with none found in 1997 and 1998 (Rinne et al. 1999a) and only two found in 1999. This dramatic fluctuation is similar to earlier fluctuations, although better documented.

Comment 4b6: Loach minnow are extirpated from Eagle Creek; loach minnow found there since 1995 were stocked from elsewhere by organizations known to have programs for planting endangered species, and the 1994 records of loach minnow in Eagle Creek are not valid because they have not yet been published in a peer-reviewed journal.

Our Response: Loach minnow were first recorded from Eagle Creek in 1950 (Univ. of Michigan museum specimens No. UMMZ 162744). Despite frequent sampling (Marsh et al.1990), they were not again recorded until 1994 (Knowles 1994, Knowles 1995). This illustrates the need for caution in concluding that a population has been extirpated. Fish, particularly small species with relatively cryptic habits, are often very difficult to locate when population levels are very low.

Loach minnow had been presumed, incorrectly, to be extirpated from Eagle Creek. Loach minnow were not stocked into Eagle Creek by any agency or governmental entity. We are not aware of, nor have we permitted, any nongovernmental groups to plant listed fish in Arizona. Genetic testing has shown the loach minnow in Eagle Creek to be a probable unique lineage differing from all other loach minnow. We have no evidence that these fish could have been planted from any other population (A. Tibbets, pers. comm. March, 2000). Sampling records from 1994 are considered valid records. Much of the monitoring of populations of endangered and threatened species is conducted by agencies and is placed into agency reports, such as the one in which these records are found. The 1995 Eagle Creek loach minnow records have also been vouchered with specimens in the Arizona State University Collection of Fishes (No. ASU165).

Comment 4b7: Both spikedace and loach minnow have been extirpated from the upper Gila River below the Middle Box (below Redrock, New Mexico) and any spikedace or loach minnow found in that area were displaced by flooding from the Cliff-Gila Valley.

Our Response: Spikedace and loach minnow continue to be found in the Gila River below the Middle Box, and depending upon conditions may be found from the mouth of the Box downstream to about the Arizona/New Mexico boundary. They were recorded near the Middle Box mouth and in the Lower Box at Fisherman's Point in 1998 (Propst and Stefferud unpub. data, Propst 1998) and at the Virden diversion in 1999 (Rinne et al. 1999b).

Comment 4b8: The San Francisco River is not occupied by spikedace and is occupied by loach minnow only above the confluence with the Blue River.

Our Response: The San Francisco River is currently occupied by loach minnow downstream from the mouth of the Blue River (Anderson and Turner 1977, J.M. Montgomery Consulting Engineers 1985, Bagley et al. 1995). The downstream extent of this population is not known precisely and likely fluctuates over time depending upon water and sediment levels, flooding, and other factors. However, it is known to extend at least 10–15 miles downstream from the confluence with the Blue River. Historical records of spikedace downstream (Minckley 1973) and upstream (Minckley 1973, Anderson 1978) from the lower San Francisco River, and the presence of apparently suitable habitat in that area, support the presumption of historical presence of spikedace. Past pollution events from the mines in the Clifton area, along with other human-caused alterations, caused the lower San Francsico River to be barren of fish at one time (Chamberlain 1904), have resulted in fish kills since that time (Rathbun 1969 as cited in Minckley and Sommerfeld 1979), and likely were a significant factor in the loss of spikedace and loach minnow from the lower San Francisco River and adjacent Gila River. The amelioration of these pollution events through modern management and regulation has eliminated them as a limiting factor to restoration of spikedace and other native species in the lower San Francisco River.

Comment 4b9: The San Pedro River is not now and has never been occupied by either spikedace or loach minnow.

Our Response: The San Pedro River is the type locality for spikedace and loach minnow. They were first collected there in 1840 and again in 1846 (Miller 1961), and were described from specimens taken there in 1851 (Girard 1856). They were taken periodically over the years; loach minnow were last recorded from the San Pedro in 1961 (University of Arizona museum No. UAZ95–190), and spikedace were last recorded there in 1966 (Arizona State University museum No. ASU 2282). See also responses to comments 4b16(c) and 4b16(j).

Comment 4b10: It was suggested that areas which are occupied by spikedace or loach minnow only under certain conditions or which are colonized during periods when streamflows are higher than average should not be considered essential to the species and should be omitted from the critical habitat.

Our Response: Spikedace and loach minnow, like many southwestern fishes, have a life history pattern of expansion and retraction of occupied areas in response to flow and other habitat conditions. To ensure the survival and recovery of species with this type of pattern it is essential to conserve not only the core habitat into which the species shrinks in times of poor conditions, but also the habitat into which it expands during times of good conditions (Moyle and Sato 1991, Meffe and Carroll 1994). The absence of spikedace and/or loach minnow from an area during certain periods or under certain conditions does not mean it is in unoccupied habitat.

Comment 4b11: Several commenters suggested that, since several of the proposed streams have portions that dry either seasonally, during drought conditions, or for other periodic reasons, therefore those streams do not meet the proposed constituent elements description of permanent flowing water and so do not qualify as critical habitat for spikedace and loach minnow.

Our Response: Spikedace and loach minnow, along with most of the native fishes of the southwest, evolved in stream systems that had portions which periodically lost flow. The species are adapted to this phenomenon and persist in flowing areas that remain and

recolonize the dewatered areas once flow resumes. Over the past 150 years, the extent of areas in the Gila basin that periodically lose flow has increased due to human alterations of the watersheds and stream channels and diversion of the streamflows.

Hydrology-based definitions of streams as ''perennial,'' ''intermittent'' (both spatially and temporally), or ''ephemeral'' are confusing, often misused, and may not relate to fish needs. Although a stream may be characterized by some as ''intermittent,'' it may still have substantial areas where flow is permanent, although those areas may not always be in precisely the same location. If sufficient areas of flow persist, and if all other habitat needs are met, then the stream is suitable for the two fish species whether or not there is flow throughout all areas at all times. Aravaipa Creek, one of the best remaining habitats for these two species, is an ''intermittent'' stream, which seldom flows in the upper half of its course, and often does not flow for several miles above its confluence with the San Pedro River (Minckley 1981). However, approximately 20–25 mi of stream presently flow at all times and support healthy populations of spikedace and loach minnow (Bettaso et al. 1995).

The critical habitat designation also specifically includes many areas that lose flow periodically, and some which may be dry during most times. Maintenance of those areas in a natural, or only slightly modified, state is essential to spikedace and loach minnow. During high flows they serve as connecting corridors for movement between the areas of permanent flow and because they are important in maintenance of natural channel geomorphology. Criteria for what might constitute adverse modification of critical habitat may be different for these stream reaches than for occupied or perennial flow areas; however, their maintenance is essential to the long-term survival and recovery of spikedace and loach minnow.

There are many areas in the critical habitat where flows are artificially altered by human diversion and uses, up to and including complete loss of flow. In some of these areas, changes in management may potentially increase duration of flows and the length of stream channel with permanent water, thus making them valuable for recovery and survival of spikedace and loach minnow. A good example of this is Fossil Creek, where the proposed relicensing of the Childs-Irving hydropower plant would involve restoration of some level of flow to the lower stream channel.

Comment 4b12: All streams proposed for designation of critical habitat contain some nonnative aquatic species, raising comments from many parties that none of the streams proposed meet the proposed constituent elements description of few or no predatory or competitive nonnative species present, and therefore do not qualify for designation as critical habitat. Several commenters went further to state that no stream that contains nonnative fish could be considered essential to the conservation of spikedace and/or loach minnow.

Our Response: The constituent elements have been rewritten to clarify the role of nonnative aquatic species in the suitability of habitat for designation as critical for spikedace and loach minnow. The level of nonnative species that may be present in habitat considered to be suitable varies depending upon the circumstances. Some nonnative species, such as rainbow trout, appear to have little effect on spikedace or loach minnow (see response to comment 7b, below). Others, such as flathead catfish (*Pylodictis olivaris*) have serious adverse effects. In some streams, the habitat complexity and distribution may allow spikedace and loach minnow to coexist with nonnative aquatic species when, under other circumstances, that nonnative may eliminate the two natives. Some unoccupied streams designated for critical habitat may have nonnative species present that will be controlled or removed before reestablishment of the two native fishes. Although the fewer nonnative aquatic species that are present, the better the situation for spikedace and loach minnow, the presence of nonnative aquatic species does not eliminate an area from consideration as critical habitat.

Comment 4b13: The upper end of Oak Creek and the Gila River in the Duncan-Virden and Safford valleys were not included in the proposed critical habitat, in part because of urban development. Therefore, the San Francisco River in and below Clifton, the Gila Box, and portions of the San Pedro and Verde Rivers do not qualify as critical habitat because of urban and other human uses of those areas.

Our Response: Urban and suburban development alone do not necessarily cause a stream to become unsuitable for spikedace or loach minnow. For the upper end of Oak Creek, the substantial urban development is not the only a factor considered in the omission of that area from the proposed designation. Habitat in the portions of upper Oak Creek omitted from the proposed designation rapidly becomes increasingly unsuitable due to stream gradient, substrate, and other inherent ecological factors. Because the adjacent designated habitat is unoccupied, and since upper Oak Creek has no value as a movement corridor to other suitable or occupied habitat, there are no overriding reasons for extending the critical habitat designation to include the small additional area that is in the urban zone.

The Duncan-Virden Valley is substantially altered by agricultural, and, to a small extent, urban development, but still supports spikedace and loach minnow in its upper portion (Rinne et al. 1996b). Information received during the comment period indicates that more of this reach of the Gila River may have been appropriate for consideration as critical habitat, and its inclusion will be re-evaluated during future revision of the critical habitat for spikedace and loach minnow.

The Safford Valley was historically suitable habitat for spikedace and loach minnow, but is now highly altered, primarily by agricultural practices, and provides only partially suitable habitat with potential for improvement with management. Since it is adjacent to unoccupied habitat and provides no movement corridor between more suitable areas, the added value of including the valley portion of the stream was considered low.

The lower San Francisco River, on the other hand, may be occupied and is adjacent to documented occupied habitat. Although altered, it still contains substantial areas of suitable habitat, and it provides a connection between the occupied area and the unoccupied recovery area in the Gila Box. The small amount of urbanization and the alterations due to flood control and mining are not significant enough to negate the value of the stretch for spikedace and loach minnow survival and recovery. The Gila Box is in a National Riparian Conservation Area and does not have urban or suburban development. There are no heavily urbanized areas along the San Pedro River within the area proposed for critical habitat. The Cottonwood-to-Camp Verde stretch of the Verde Valley is heavily urbanized but still contains substantial suitable, occupied habitat which, if appropriate diversion management takes place, could be significantly improved. The area is also a connecting corridor between occupied upstream areas and important unoccupied downstream recovery areas.

Comment 4b14: The habitat in Oak Creek is not suitable for spikedace or loach minnow due to heavy recreation use.

Our Response: We agree that heavy recreation use in Oak Creek may be adversely impacting the stream and its fish habitat. However, we believe that suitable habitat still exists for spikedace and loach minnow and, with proper management, recreation and recovery of these two fishes can be compatible.

Comment 4b15: Some comments contend that the San Francisco River below its confluence with the Blue River and the Gila River in the Gila Box are too large to be suitable for either spikedace or loach minnow because they are larger than the Verde River below Fossil Creek, which was not included in the designation. In addition, concern was expressed that the Gila Box contains too much sediment to support spikedace and loach minnow.

Our Response: The San Francisco River below its confluence with the Blue River and the Gila River below its confluence with the San Francisco are well within the historical range of both species and contain suitable habitat. Median flows (discharge) at the gauging station near Clifton on the San Francisco River are similar to those for the Verde River near Clarkdale, within occupied spikedace habitat (Pope et al. 1998). Median flows at the gauging station at the head of the Safford Valley are about 25 percent less than those in the Verde River below Fossil Creek (Pope et al. 1998). In addition, the Verde River below Fossil Creek is well within the historical range of spikedace and loach minnow and, as some commenters have pointed out, has sufficient suitable habitat to meet critical habitat criteria.

Comment 4b16: Many commenters contend the San Pedro River does not have suitable habitat for spikedace and loach minnow based on a number of factors. These include—(a) The river was changed dramatically by a late 1800's earthquake and no longer has permanent flowing water; (b) toxic mine waste spills from Mexico occur periodically and are not within our control; (c) the extirpation of spikedace and loach minnow from the San Pedro 30 years ago is conclusive evidence that the habitat is not suitable; (d) the gradient in the river is too high or too low; (e) the substrate is not the appropriate size; (f) the San Pedro River does not have a snowmelt hydrograph; (g) recent reestablishment of beaver precludes spikedace and loach minnow occupation; (h) there is too much water depletion by humans; (i) riparian vegetation is destroying the aquatic habitat and increasing nonnative fish; and (j) the statement that this is the ''type'' locality is inappropriate because it is not the right type of habitat.

Our Response: (a) The fish of the upper San Pedro River are sampled twice yearly, once by the BLM and once by the Bureau of Reclamation (Stefferud and Stefferud 1989, 1990, 1998, Girmendonk et al. 1997, Clarkson 1998, Marsh 1999). The Middle San Pedro is sampled annually by the Bureau of Reclamation. Other, irregular samplings occur. This work has confirmed that there is permanent water in the river, that flow supports three native and several nonnative fish species, and that there is suitable or potentially suitable habitat for spikedace and loach minnow in both the upper and middle San Pedro River. Whatever the effects of the 1887 earthquake on the habitat and flow of the San Pedro River, spikedace and loach minnow were present prior to the earthquake and for almost 100 years after the earthquake. Therefore, it is unlikely that the earthquake was a definitive factor in the presence or absence of habitat for spikedace and loach minnow.

(b) Toxic flow events in the past from mines near Cananea, Sonora, Mexico, have had highly adverse effects to the fauna of the San Pedro River (Eberhardt 1981). In fact, it is likely that such events in the late 1960's and early 1970's were responsible for extirpating spikedace and loach minnow from the San Pedro River. Other human activities in the upper San Pedro River in Mexico can potentially adversely affect the use of the U.S. portion by spikedace and loach minnow. However, we intend to work with the governments of Mexico and Sonora to minimize adverse effects.

(c) The overall gradient of a river doesn't change over 100 years, barring serious geologic events. Although there was a substantial earthquake in southeastern Arizona in 1887, there is no evidence that it altered the overall gradient of the river (DuBois and Smith 1980, Hereford 1993). The San Pedro River is the type locality of both spikedace and loach minnow and supported both species when first sampled in 1840 and for 120 years after that, demonstrating its suitability for the two species. Please also see our response to comment 4b9.

(d) Although fine substrate is predominant in most reaches of the San Pedro River, the upper river in the Riparian National Conservation area has significant areas of riffle habitat with gravel and cobble substrates that are capable of supporting spikedace and loach minnow (Stefferud and Stefferud 1989, Velasco 1993). The middle San Pedro River, at present, has little substrate of suitable size for spikedace and loach minnow. However, substrate size is a function of many other river variables, such as velocity, flow volume, bank structure, and sediment source. Personal observations by our biologists, along with discussion with biologists from The Nature Conservancy, AGFD, BLM, and the Desert Fishes Recovery Team support a conclusion that this portion of the San Pedro River has a strong potential for enhancement to the point where it may once again support healthy populations of spikedace and loach minnow. One commenter compared average substrate particle sizes in the San Pedro River with those in Aravaipa Creek and concluded that since the latter were larger, the San Pedro River does not have suitable substrate for spikedace and loach minnow. However, fish use microhabitats within the overall stream and those microhabitats may have substrates, or other constituents, that differ from the ''average.'' For example, a mile of stream may be primarily a shallow, sandy run, but it may also contain deep pools at rock bends and root wad overhangs. A fish which requires pools could not survive in the average shallow depth and sandy substrate, but may still be present because it uses the ''nonaverage'' habitat of pools.

(f) The role of snowmelt in the hydrograph of the San Pedro River has not changed over the past 160 years, and spikedace and loach minnow occupied the San Pedro River during at least 120 of those years. This information supports a conclusion that a snowmelt hydrograph is not a determining factor in suitability of a stream system for spikedace and loach minnow.

(g) The BLM and the AGFD have assured us that the reestablishment of beaver can be controlled and managed to prevent severe loss of potential recovery for the two fishes. Beaver were native to the San Pedro River and historically coexisted with spikedace and loach minnow, both here and elsewhere. Given careful management, we believe that beaver, spikedace, and loach minnow reestablishments can all succeed in the San Pedro River.

(h) We are working closely with a number of Federal, State, and local entities to ensure that flows in the San Pedro River continue.

(i) Although riparian vegetation does remove a certain portion of the surface and subsurface flow of a river through evapotranspiration, (the movement through, use of, and evaporation from the surface of water by plants) it also provides many irreplaceable benefits to the aquatic ecosystem (Auble *et al.*

1994, Bagley *et al.* 1998, Osborne and Kovacic 1997, USBLM 1990). Without healthy riparian vegetation a stream is subject to, among other things, increased erosion, increased water temperatures, and a decrease in instream community diversity formed by streambanks and large woody debris. Under some circumstances increased riparian vegetation may increase nonnative fish species by increasing the types of habitats favored by those species. However, a healthy riparian system will provide a higher diversity of aquatic community types, thus allowing a greater degree of coexistence between native and nonnative fishes.

(j) The San Pedro River is the ''type locality'' for spikedace and loach minnow. The type locality of a species is simply the area from which the ''type specimens'' were taken. Type specimens are those preserved specimens that were used to first describe the species. Please also see our response to comment 4b9.

Comment 4b17: There were many comments which contended that Eagle Creek does not have suitable habitat for spikedace and loach minnow based on a number of factors. These included—(a) it is an artificial system with flows coming from a transbasin diversion and groundwater pumping; (b) there are several distinct topographic stretches and spikedace and loach minnow could not occupy all of those different topographic areas; (c) the historical presence of beaver in Eagle Creek make the system unsuitable to have ever supported spikedace and loach minnow and the continued presence of beaver make the habitat presently unsuitable for the two fish species; and (d) neither spikedace nor loach minnow were ever present above Sheep Wash due to unsuitable habitat historically and any suitable habitat there now will become unsuitable as Eagle Creek in that area reverts to a more natural system.

Our Response: (a) Spikedace and loach minnow are both known to have historically occurred in Eagle Creek. Although the stream has been modified by human augmentation of the flows, that modification has not been sufficient to eliminate either species. The continued survival of both species in the artificially modified stream supports the position that the habitat is suitable. Modification of the stream does not automatically disqualify an area from designation as critical habitat and consideration as essential to the conservation of the species. The artificial augmentation of Eagle Creek flows may help mitigate other habitat alterations that have decreased natural flows in the system, thus resulting in a system that is more ''natural'' than it would be without the artificial augmentation.

(b) It is true that Eagle Creek has distinct topographic areas, including canyon reaches and valley reaches. However, all of the topographic areas within the proposed section of Eagle Creek contain riffle habitats suitable for spikedace and loach minnow, although in varying proportions. As stated in this rule, it is important to protect areas of large enough size and connectivity to allow for fluctuations in habitat over time and movement of fish between areas.

(c) Spikedace and loach minnow historically coexisted with beaver in most, if not all, of their historical range. There is no evidence to indicate that the presence of beaver preclude spikedace and loach minnow presence.

(d) In 1950, Miller recorded loach minnow from near Sheep Wash (Marsh *et al.* 1990). In 1994 and again in 1995, Arizona State University personnel recorded loach minnow near Honeymoon Campground, about 15 miles upstream from Sheep Wash (Knowles 1994, 1995). Spikedace were first collected in 1985 (Bestgen 1985) in lower Eagle Creek. They were collected near Sheep Wash through 1987, and have not been collected since that time. There is presently suitable habitat for both species throughout the upper area of Eagle Creek above Sheep Wash. Although upper Eagle Creek has been substantially modified by human activities, the topography, geology, and stream geomorphology indicate that it is likely the stream in that area historically supported suitable habitat for spikedace and loach minnow and that ''reversion'' to a more natural state will not prevent the presence of those two species.

Comment 4b18: We received comments that no suitable habitat exists on Fossil Creek for spikedace and loach minnow. This was based on a 1998 USFS NEPA compliance review on an adjacent livestock grazing allotment. Commenters also felt the hydropower diversion of Fossil Creek is favorable to spikedace and loach minnow because it prevents upstream migration of nonnative fish, and believe it is premature to assume flows in Fossil Creek will be enhanced as a result of hydropower relicensing.

Our Response: The information on which the USFS finding was based was not provided or available, therefore we cannot assess why it differs from information in our files and that we have received from other sources, including USFS documents regarding the Childs/Irving hydropower relicensing.

The diversion of almost all flow from lower Fossil Creek for hydropower does inhibit upstream migration of nonnative fish. However, we believe there are more effective ways to prevent nonnative incursion than flow diversion. The application of the hydropower licensee to the Federal Energy Regulatory Commission includes a proposal to return some flow to lower Fossil Creek. In addition, negotiations are ongoing that may result in even larger flows in lower Fossil Creek. Either way, the stream is expected to recover suitability for spikedace and loach minnow.

Comment 4b19: One commenter felt that Rye Creek did not provide suitable habitat for spikedace and loach minnow and that the statement in the rule regarding the presence of a native fish community was in error.

Our Response: Rye Creek is poorly sampled, but Abarca and Weedman (1993) reported a fish community dominated by two native fishes—longfin dace (*Agosia chrysogaster*) and desert sucker (*Pantosteus clarki*), and Bancroft *et al.* (1980) also reported Sonora sucker (*Catostomus insignis*), speckled dace (*Rhinichthys osculus*), and Gila chub (*Gila intermedia*). In 1995, a sampling recorded all five of those native species (Weedman *et al.* 1996), which is a large number of native species remaining compared to most streams in the Gila Basin. Of the seventeen native fishes of the Gila River basin, only one stream (Eagle Creek) has eight species remaining, three others have seven (upper Gila River in New Mexico, upper Verde River, and Aravaipa Creek), and the San Francisco and Blue Rivers each have six species remaining. Two nonnative species were also reported in Rye Creek in 1980, three in 1993, and three again in 1995, which composed less than 10 percent of the fish present. The presence of this native fish community, plus the presence of what is reported by biologists with expertise in spikedace and loach minnow to be suitable habitat (J. Stefferud, USFS, pers. com. February 2000) is sufficient evidence to include Rye Creek in the designation. Suitable areas to recover spikedace and loach minnow in the Salt River Basin are very limited and we believe it is important that the Tonto Creek complex include more than just the mainstem. Information on other suitable tributaries was provided by USFS comments on the proposed rule. These tributaries may also provide recovery habitat that may be considered for possible designation in a future revision of the critical habitat for spikedace and loach minnow.

Comment 4c: Several commenters recommended additional areas be included in the designation of critical habitat. Those areas are listed in Table 4.

Our Response: Because of the requirement for all proposed designation to undergo public review and comments, areas normally are not added to the designation without an additional proposal. We will consider all information provided on additional areas in future revision of the critical habitat for spikedace and loach minnow. Based on the best available science at this time, we determine that the areas designated by this rule are sufficient to conserve the species. Our responses on individual areas suggested for addition are given in Table 4.

TABLE 4.—REQUESTS FOR ADDITIONS TO CRITICAL HABITAT AND RESPONSE

Complex number	Stream reach	Reason for recommended addition	Fish and Wildlife Service response
1	Sycamore Creek (upper Verde basin)	Why other Verde tributaries but not Sycamore Creek?	Except at mouth, gradient too high and habitat not suitable.
1	Verde River from Fossil Ck to Sheep Bridge.	Believe is suitable for recovery of spikedace and loach minnow.	Will seek additional information.
1	Lower East Verde River	Believe is suitable for recovery of spikedace and loach minnow.	Believe unsuitable—will seek additional information.
1	Red Creek	Believe it suitable for recovery of spikedace and loach minnow.	Will seek additional information.
1	Lower Tangle and Sycamore Creeks (middle Verde basin).	Believe is suitable for recovery of spikedace and loach minnow.	Will seek additional information.
3	Slate and Gun Creek	May meet criteria for critical habitat	No information on these creeks—will seek information.
4	Mescal Creek	In spikedace recovery plan as possible reintroduction site.	Could contribute to diversity and complexity in complex.
5	Babocomari River	May meet criteria for critical habitat	Lower and upper ends not suitable habitat, no information on middle portion—will seek further information.
6	Bonita Creek above Martinez Wash	Has suitable habitat	Information from San Carlos Dept. of Nat. Resources is that no suitable habitat exists.
6	Eagle Creek below Phelps Dodge dam	Omission is inconsistent with emphasis on continuity in critical habitat.	Would contribute to connectivity, but has little habitat due to water diversion.
7	Mangas Creek	Believed to have spikedace population	Channel is highly eroded and no significant surface flow during most times—will seek information.
None	Salome Creek	May meet criteria for critical habitat	Will seek additional information.
None	Cherry Creek	May meet criteria for critical habitat	Believe too little low to moderate gradient areas are present—will seek additional information.
None	White River	Occupied and considered biologically important.	See section on Tribal issues.
None	Gila River ''as it flows through Phoenix''	Has similar potential to areas proposed	Assuming commenter meant Gila River south of Phoenix, river is diverted and dry most of time, channel highly degraded, not suitable for these fish.

Comment 4d: Several commenters identified areas they believe have no need for critical habitat designation.

Comment 4d1: Designation of critical habitat on Federal and State lands is not needed, according to a number of commenters, because it is already protected by a number of laws, regulations, policies, and plans. Designation of critical habitat on private lands is also not needed because they are privately owned and critical habitat designation does not provide any protection.

Our Response: Although there is management ongoing on most Federal lands, and to a limited extent on State and private lands, there continue to be many threats to these two fishes. Critical habitat may enhance management on Federal lands, and may help prevent adverse impacts on private lands due to Federal actions.

Comment 4f2: Some comments suggested that critical habitat designation is not necessary because the threats to the species are from native and nonnative fish rather than habitat alteration or loss. In support of this a report by Propst et al. (1986) was cited as reporting that a nonnative fish, red shiner (*Cyprinella lutrensis*), and two native fish, longfin dace, and speckled dace, are competitive species known or observed to displace spikedace and loach minnow. One comment also contends that three other native fish, Gila chub, Sonora sucker, and desert sucker are predatory, with the implication they consume spikedace and loach minnow to the detriment of those species.

Our Response: Both habitat alteration and loss and nonnative competition, predation, and other effects have contributed substantially to the threatened status of spikedace and loach minnow. Furthermore, these factors are inextricably intertwined. Habitat alteration has been a significant contributor to nonnative fish invasion, spread, and adverse effect. In turn, nonnative species have been a significant contribution to the inability of native fish to thrive in altered habitats. There is no information to indicate that either longfin dace or speckled dace adversely affect spikedace or loach minnow and the 1986 report does not make those claims (D. Propst, New Mexico Dept. of Game and Fish; pers. com. March, 2000). All four species are native to the Gila River basin and longfin dace and speckled

dace were part of the community of species in which spikedace and loach minnow evolved. Differences in their habitat requirements enable the four species to coexist in the same stretch of stream. Their relative abundance may change due to habitat changes, but is not known to change due to interspecific interactions.

Gila chub, although partly predatory, feeds mostly on organic debris and invertebrates and occupies habitat quite different from that of spikedace and loach minnow, thus making direct predation of Gila chub on either spikedace, loach minnow, or any fish, an unlikely occurrence (Weedman et al. 1996). Gila chub distribution has declined substantially in the past 100 years and it shares few stream reaches with either spikedace or loach minnow. Neither Sonora sucker nor desert sucker are known to be predatory; they consume organic debris from the substrate (Minckley 1973).

Comment 4d3: Some of the areas proposed are already included in designated critical habitat for other species, such as the southwestern willow flycatcher, razorback sucker (*Xyrauchen texanus*), Huachuca water umbel (*Lilaeopsis schaffneriana* var. *recurva*), and cactus ferruginous pygmy-owl (*Glaucidium brasilianum cactorum*). Therefore, some commenters felt the additional protection for spikedace and loach minnow is unnecessary and might lead to adverse effects on the species for which the area was already designated as critical habitat.

Our Response: The habitat needs of spikedace and loach minnow are not identical to those of the other four species whose designated critical habitat overlaps that designated for the two fish. Therefore, protection of the habitat of those species will not necessarily suffice for spikedace and loach minnow, although we expect that protection of the habitat of one species will often result in at least partial or total protection for the other species in the same area. Also, the critical habitat designation for other species would be removed upon the delisting of those species. Thus, the protection provided from the one species' designation does not assure the long-term protection for others.

We do not anticipate protection of one of the species for which the area is designated as critical habitat as being adverse to any of the others. However, during section 7 consultation, we would consider the interaction and possible conflict of requirements for different listed species. The purpose of the Act is protection of ecosystems and we encourage management of areas with listed species on ecosystem principles which will ensure benefits to all the species in the area.

Comment 4e: Some comments compared the critical habitat to the recovery plans for spikedace and loach minnow. In particular, a concern was raised that some areas proposed for critical habitat were not specifically identified in the recovery plans as recovery areas.

Our Response: Although the recovery plans for the two fishes identify some areas specifically as having a strong recovery potential, they also call for identification of other reaches with recovery potential. That process has been ongoing in the nine years since the recovery plans were prepared and discussions among experts on the species have assisted us in identifying the areas in the designated critical habitat.

Comment 4f: A number of comments were received that expressed concern that designation of critical habitat would have adverse effects on spikedace and loach minnow.

Comment 4f1: The Blue River was not occupied by loach minnow in 1904 but they became common by 1995 as a result of livestock grazing management. Critical habitat designation will change grazing management with adverse impacts to loach minnow.

Our Response: There are no known records of native fish from the Blue River prior to 1904. In 1904, Chamberlain conducted a brief survey of fishes of the Blue River from its mouth to the confluence with K.P. Creek (Chamberlain 1904, Minckley 1999). He did not find loach minnow; he found only one native fish, the longfin dace. The reason for the scarcity of all other native fish is unknown, but probably relates to the human alterations of the stream channel and watershed that led Aldo Leopold to call the Blue River ''ruined'' (Leopold 1921, Leopold 1946). Although Chamberlain's survey indicated that loach minnow were clearly not common in that portion of the Blue River in 1904, it does not provide evidence regarding historical occupation of spikedace and loach minnow in the Blue River, nor does it alone support a conclusion that either species was extirpated from the river. The next records of a native fish survey in the Blue River are from 1977, when Anderson and Turner found five species of native fish, including loach minnow. In the mid-1990's, loach minnow were relatively common in the Blue River, although they were the rarest of the five remaining native species (AGFD 1994, Bagley et al. 1995).

We have no data to indicate that grazing management is responsible for introducing or enhancing loach minnow in the Blue River. Caution must be used in interpreting data from a point-in-time sample such as Chamberlain's. Both spikedace and loach minnow exhibit the strong fluctuations in population levels typical of small, short-lived species, and 1904 may have been a low-point in their population cycles for many reasons related or unrelated to livestock grazing or other human influences.

Comment 4f2: A number of commenters alleged that designation of critical habitat will be detrimental to spikedace and loach minnow by removing human-caused disturbance (particularly livestock grazing) of the aquatic ecosystem which will cause the habitat to change into an unsuitable condition for spikedace and loach minnow. They believe the altered habitat will be highly suitable for nonnative fish, thus allowing them to expand and severely reduce or eliminate spikedace and loach minnow. They cite the recent Verde River work of John Rinne, of the USFS Rocky Mountain Research Station, which they believe was overlooked in the proposed rule.

Our Response: It is correct that spikedace and loach minnow, along with all of the native fish community of the Gila River basin, require a certain level and type of disturbance in their habitat. The primary factor in its natural disturbance regime is periodic flooding, although other natural processes such as fire and erosion also contribute to the natural disturbances influencing aquatic systems. These processes are a characteristic of healthy dynamic river systems and natural flooding and hydrographs are part of the constituent elements described above.

It is also true that under certain circumstances human-caused disturbance may provide benefits to the species, such as rejuvenation of spawning gravels or removal of nonnative species. However, there is no information that indicates human-caused disturbance can mimic the complex natural disturbance processes, with the possible exception of prescribed burning.

We are aware of Dr. Rinne's work in the Verde River and did not overlook the papers discussing his work (see our response to comment 4(g)) Dr. Rinne's work provides speculation on the potential connection between the low population levels of spikedace in the Verde River that have occurred concurrently with the removal of livestock from the riparian corridor (Rinne 1999a, 1999b). Disturbance created by livestock grazing or

bulldozing the stream channel are far different from that caused by flooding.

Comment 4f3: Designation of critical habitat on private lands will result in loss of access to those lands and therefore such designation cannot be essential to the conservation (recovery) of the spikedace and loach minnow.

Our Response: We will continue to work with any private landowners whose lands support habitat occupied by, or presently or potentially suitable for, spikedace and loach minnow, and who would like to voluntarily cooperate in conservation activities. This would be the case with or without critical habitat designation.

Comment 4f4: One commenter believes that exclusion of San Carlos Tribal lands will preclude management of native fish in the middle Gila River below the confluence with the San Pedro River due to incompatible goals of the San Carlos Apache Tribe.

Our Response: We are not aware of any provision of the critical habitat that would preclude management of native fish in the middle Gila River. Furthermore, we do not believe self-management of San Carlos Apache Tribal lands will negate the conservation of native fishes in the middle Gila River.

Comment 4f5: Some commenters contend that the designation of critical habitat for spikedace and loach minnow will prevent flood control and human management of riparian vegetation, floodplain, and streambank structure. This will prevent or complicate use of best management practices and result in a loss of natural river functioning and an increase in flooding and flood damage. Other commenters assert that designation of critical habitat will hinder proper management of native fishes and will prevent or inhibit removal or control of undesirable nonnative species.

Our Response: We do not believe that natural river function precludes flood control and human management of riparian vegetation, floodplain, and streambank structure. Designation of critical habitat will not prevent such human alterations of the ecosystem, but may result in modifications of those human actions to ameliorate or avoid the most serious of the adverse consequences of those actions to spikedace and loach minnow. Designation of critical habitat will not increase flooding, although it is hoped that through section 7 consultation we can ensure watershed management practices that will alter flood patterns toward a more natural regime. A more natural regime will have lower flood peaks and higher low flows. Increased upland, riparian, and stream channel conditions should lead to greater infiltration and bank storage, thus lowering flood peaks and increasing base flows.

Critical habitat is not expected to hinder management of native fishes. Such a result would be contrary to the purpose of the designation. Since recovery of spikedace and loach minnow depends upon some control and removal of undesirable nonnative species, we anticipate that critical habitat designation will assist that effort by identifying areas in need of such management and inhibiting actions that increase nonnative introduction and distribution.

Comment 4f6: Many commenters were concerned about the role of nonnative aquatic species, particularly fish, in the recovery of spikedace and loach minnow. They believe that rivers within the Gila basin cannot be restored for recovery of spikedace and loach minnow due to the presence of nonnative species which some suggest cannot be removed or controlled. They believe removal of adverse impacts or improvement of habitat conditions will always favor nonnative species. ''Restoration'' will always result in increases in pools and loss of riffles, runs and glides. Therefore, no areas of stream needing restoration or habitat enhancement should be included in the critical habitat.

Our Response: While restoration may provide enhanced opportunities for nonnative species as well as for native species, this problem must be dealt with on a site-specific basis. Restoration or enhancement plans must consider this issue and provide for mechanisms to prevent unacceptable adverse impacts from nonnative species. Nonnative species in many cases can be completely removed using a variety of techniques. In other cases, control measures can reduce nonnative populations to acceptable levels.

Comment 4g: Several commenters felt that designation of critical habitat should be delayed because they believe more information or studies are needed for a valid decision. Others felt that the best available scientific and commercial information was either not used or was not sufficient and that the designation was based on faulty information and ''bad science.'' The most commonly cited evidence of this was what the commenters felt was failure to consider a body of literature by Dr. John Rinne, of the U.S. Forest Service Rocky Mountain Research Station. According to the commenters, Dr. Rinne has information indicating that the accepted knowledge on spikedace and loach minnow and their habitat is incorrect, that there is not clear understanding of what spikedace and loach minnow habitat management requires, that spikedace have been extirpated from the Verde River due to removal of livestock grazing, that human disturbance is necessary to the survival of these two fish, and that aquatic vegetation is harmful to spikedace.

Our Response: The Act requires designation of critical habitat using the best available information. Delaying designation to obtain more information is not legally justified. If significant new information arises that calls this designation into question, we can revise it through a new proposal and final rule.

Dr. Rinne is the author of a number of papers, in peer reviewed journals and other outlets, on spikedace, loach minnow, and other Gila basin native fishes. All of Dr. Rinne's work was considered in our analysis leading to the proposed designation (see also comment response 4f2). Dr. Rinne is a consultant on the Desert Fishes Recovery Team and has participated exensively in our work on conservation of spikedace and loach minnow. We are not aware of any statement in print by Dr. Rinne that spikedace are extirpated from the Verde River, although he has stated that spikedace is ''absent'' from the Verde (Rinne et al. 1999b) and that they are ''rare'' there (Rinne et al. 1999a). Spikedace were collected from the Verde River in spring 1999 by AGFD (AGFD unpub. data) and there is no information to support a finding of extirpation.

Dr. Rinne's work does not contain any significant new information on distribution, biology, ecology, or other aspects of spikedace and loach minnow that contradicts what has been found in earlier work by him and other researchers. Dr. Rinne's conclusions regarding the role of disturbance in spikedace habitat and the balance between nonnative and native fishes has been primarily oriented toward natural flooding and low flows (Stefferud and Rinne 1996, Rinne and Stefferud 1997, Neary and Rinne 1998). We do not find any conclusion regarding the necessity for human-caused disturbance in spikedace or loach minnow habitat in any of Dr. Rinne's work. He has speculated on the role of livestock grazing in stream habitat conditions and noted the downturn in spikedace population that coincided with removal of livestock grazing from the riparian corridor (Rinne 1999a). He has stated that he believes we do not know enough about livestock grazing impacts on fish and their habitat to make valid management decisions (Rinne 1999). Dr.

Rinne's views on some of these subjects do not necessarily reflect all views in the scientific community working on desert fishes (Brooks *et al.* 2000).

Comment 4h: Some commenters objected to use of any information not in the peer-reviewed literature. Some also objected to use of survey or study information that was not directly obtained by us. They believe it is inappropriate for us to rely on the work of other entities.

Our Response: Much of the information regarding native fish distribution and management is in agency documents and other non-peer reviewed literature. This forms part of the best available information on the species and it would be biologically unsupportable to make decisions which ignore that information. Most of the surveys and studies on native fish are conducted by entities other than us. We rely heavily on information about these species and their habitats from agencies such as the state game and fish agencies and universities.

Comment 4i: One commenter believes the Service overlooked important information that spikedace can bury underground and survive extensive periods without water. This person states that spikedace have been found by local residents in rainwater puddles in upland areas, such as the parking lot at the Duncan, Arizona, high school.

Our Response: There is no information in the scientific literature or within the expertise of biologists working on spikedace to indicate that spikedace can either bury underground or survive without water. Available evidence indicates that spikedace die only minutes after being removed from water. They can, however, survive in only small amounts of water. In a streambed, there may be small pockets of water between rocks and under overhanging banks or rocks that fish can use to survive short periods of no flow. There have been no valid reports of which we are aware of spikedace appearing in rainwater puddles in upland areas.

Comment 4j: Some comments addressed the issues of continuity and fragmentation. Because certain stretches of the San Pedro were not included in the critical habitat designation, thus violating the principles of habitat continuity expressed in the draft rule, one commenter felt that no portion of the San Pedro River should be included in the critical habitat designation. Other commenters believe that the designated critical habitat should be broken up into small, isolated segments without connecting corridors to help prevent nonnative species from invading the critical habitat. They believe designation of connecting areas as critical habitat will increase nonnative fish movement and adverse effects to spikedace and loach minnow.

Our Response: Although we attempted to designate critical habitat areas that were large and diverse enough to provide for connections between habitat areas, we omitted certain areas of the San Pedro River. The upper San Pedro River in the Riparian National Conservation Area is to some extent hydrologically disjunct from the middle San Pedro River (see USGS hydrologic data). This, plus the signficant areas of no flow and no permanent water and the level of channel alteration and ongoing disturbance, led us to omit that area. The exclusion of those areas in the critical habitat designation will not, per se, prevent nonnative species from using those corridors and inclusion will not provide any opportunities for nonnative movement that do not exit without the designation. The middle San Pedro River and its tributaries of Redfield and Hot Springs canyons form a complex that we think is of sufficient size and complexity to justify a unit. The lower San Pedro receives most of its flow from Aravaipa Creek and forms a unit more closely aligned to Aravaipa Creek and the middle Gila River than to the middle San Pedro River, at least under present conditions. If additional information becomes available that indicates the omitted areas in the San Pedro River should be included in the critical habitat, it may be considered in any later revisions of the designation.

The designation of connecting areas in the critical habitat is, in part, to provide the opportunity for spikedace and loach minnow to move between stream sections, thus maintaining natural fluctuation patterns and providing for recolonization of areas which have become depopulated due to temporary conditions. The designation will also help keep those areas in a condition where natural hydrographs and channel geomorphology are maintained relatively intact.

Comment 4k: Commenters mentioned a number of pieces of information which they felt were omitted from the proposed rule that should be provided before any final decision on critical habitat. These included the qualifications of Charles Girard to identify the type specimens of spikedace and loach minnow from the San Pedro River in 1851; the special management considerations or protections which would be needed for each stream segment; the restoration measures that would be taken to make each segment capable of providing the constituent elements; streamflow data on all streams proposed for designation and analyses of those data and their relationship to the habitat needs of spikedace and loach minnow; an explanation of the science supporting the importance of the floodplain in stream ecology; the recent science on ''river pooling''; a discussion of fishery-livestock grazing dynamics; and detailed genetic data to support the differentiation between populations of spikedace and loach minnow.

Our Response: The proposed rule is a summary of the information used to formulate the proposal for critical habitat designation, as required by the Act. Detailed information can be obtained from the literature cited in the proposed and final rules, the recovery plans for these two species, as well as in many other literature sources. We can provide assistance in obtaining literature on any of the above subjects (see **ADDRESSES** section).

Comment 4l: A few commenters suggested that, rather than trying to restore spikedace and loach minnow in the unoccupied areas proposed for critical habitat, recovery for the species should be accomplished by raising the two fish in captivity and selling them commercially for aquarium fish and in private ponds.

Our Response: The purpose of the Act is to conserve listed species and the ecosystems on which they depend. Relegating a species to captivity does not conserve the ecosystem on which they depend. In addition, spikedace and loach minnow require flowing streams, so are not easily raised in captivity and do not survive well in aquaria or ponds.

Comment 4m: Some commenters pointed out that spikedace and loach minnow were unsuccessfully introduced in Sonoita Creek and Seven Springs Wash. They believe this proves they cannot be successfully established in any areas other than where they currently exist and therefore no unoccupied areas should be included in the critical habitat designation as there is no probability they can be used for recovery.

Our Response: The 1968 stocking of spikedace and loach minnow into Sonoita Creek and 1970 stocking of both into Seven-Springs Wash failed (Minckley and Brooks 1985). The reasons for these failures are unknown; however, repatriation techniques and information on these two species and their habitat needs has increased substantially since 1970. Neither Sonoita Creek nor Seven-Springs Wash have been proposed for critical habitat for the two fish. We do not believe the failure of these stockings discourages

future attempts to reestablish the species in areas where they have been extirpated.

Issue 5: NEPA Compliance

Several commenters questioned the adequacy of our Environmental Assessment (EA) and other aspects of our compliance with NEPA.

Comment 5a: The Fish and Wildlife Service should prepare an Environmental Impact Statement (EIS) on this action.

Our Response: An EIS is required only in instances where a proposed Federal action is expected to have a significant impact on the human environment. In order to determine whether designation of critical habitat would have such an effect, we prepared an EA of the effects of the proposed designation. The draft EA was made available for public comment on the day the proposed critical habitat rule was published in the **Federal Register**. Following consideration of public comments, we prepared a final EA and determined that critical habitat designation does not constitute a major Federal action having a significant impact on the human environment. That determination is documented in our Finding of No Significant Impact (FONSI). Both the final EA and FONSI are available for public review (see **ADDRESSES**).

Comment 5b: Several counties requested Joint Lead Agency or Cooperating Agency status in preparation of an EIS for this critical habitat designation. Why were those requests denied?

Our Response: Catron and Hidalgo Counties, New Mexico, each requested Joint Lead Agency status to assist us in preparation of an EIS on the critical habitat designation. In addition, Cochise County, Arizona, requested either Joint Lead Agency or Cooperating Agency status. When preparing an EIS, a Joint Lead Agency may be a Federal, State, or local agency; however, a cooperating agency may only be another Federal agency (40 CFR 1501.5 and 1501.6). In December, 1999, we responded to those requests, stating that we were preparing an EA on the proposed action and that, should the EA result in a determination that an EIS was necessary, we would consider the counties' requests. However, since the EA resulted in a FONSI (see response to comment 5a, above), the issue of Joint Lead Agency or Cooperating Agency status on preparation of an EIS became moot.

Comment 5c: The Service's range of alternatives considered in the draft EA was inadequate.

Our Response: We reassessed and modified our analysis and believe we considered sufficient alternatives in the Final Environmental Assessment.

Issue 6: Tribal Issues

The following comments and responses involve issues related to our treatment of Native American lands and properties during the designation process.

Comment 6a: The exclusion of tribal lands places an unfair burden on non-tribal lands designated as critical habitat.

Our Response: We do not agree with this commenter's assessment that the exclusion of tribal lands places an unfair burden on non-tribal lands within the designation. We are committed to working cooperatively with all willing parties—private land owners as well as Federal and State land managing agencies and Native American Indian Tribes in developing conservation agreements, partnerships, and habitat conservation plans which can make further Federal management of those lands unnecessary.

In this case we concluded that the benefits of excluding Tribal land from the designation outweighed the benefits of including the land. Additionally, the White Mountain Apache Indian Tribe's native fishes management plan will provide conservation for the species and further Federal management under the critical habitat designation is not needed for the species on the reservation. Furthermore, tribal management of these native fish resources will also benefit native fish management of adjacent non-tribal lands. Although neither the San Carlos Apache nor Yavapai Apache tribes have developed conservation plans for these species at this time, we believe that the benefits from encouraging conservation through tribal self-governance outweighs the benefits of inclusion in the critical habitat designation. See the section titled ''American Indian Tribal Rights, Federal-Tribal Trust Responsibilities, and the Endangered Species Act'' for additional discussion concerning the Service's decision regarding tribal lands.

Comment 6b: When referring to excluding tribal lands from critical habitat designation, does this apply to lands owned by the Tribe, or only to lands identified as being within the reservation boundary?

Our Response: All tribal lands containing potential critical habitat for the spikedace or loach minnow that were ultimately excluded from the designation are within reservation boundaries.

Issue 7: Effects of Designation

The following comments and responses involve issues related to the effects of critical habitat designation on land management or other activities.

Comment 7a: The Service should clarify how critical habitat designation will affect specific land uses or management practices.

Our Response: We intended that the portion of this final rule titled ''Effect of Critical Habitat Designation'' serve as a general guide to clarify activities that may affect or destroy or adversely modify critical habitat. However, specific Federal actions will still need to be reviewed by the action agency. If the agency determines the activity may affect critical habitat, they will consult with us under section 7 of the Act. If it is determined that the activity is likely to adversely modify critical habitat, we will work with the agency to modify the activity to minimize negative impacts to critical habitat. We will work with the agencies and affected public early in the consultation process to avoid or minimize potential conflicts and, whenever possible, find a solution which protects listed species and their habitat while allowing the action to go forward in a manner consistent with its intended purpose.

Comment 7b: The Service should clarify how critical habitat will affect management of nonnative fish. Will stocking of trout and other nonnative fish species be affected by the designation of critical habitat on several creeks and streams in Arizona?

Our Response: We previously consulted on the winter rainbow trout fishery in the middle Verde River and on trout stocking in the upper Gila River. Trout stocking in those areas has proceeded. While each situation must be evaluated on a case by case basis, we anticipate that trout stocking may be compatible with recovery of the spikedace and loach minnow in most situations because trout are not as predacious as are many other nonnative fish, they only persist in the upper reaches of these streams, and they do not survive the summer if they move downstream into warmer waters. The stocking of nonnative fish species other than trout, particularly in areas near, or connected to, habitat for these listed species, regardless of critical habitat designation, may require additional consultation when a Federal nexus exists and a combination of techniques may be necessary to reduce the impacts.

Comment 7c: The designation of critical habitat will impose section 9 restrictions against taking of individuals

of these two species in areas that do not currently have those restrictions.

Our Response: Section 9 of the Endangered Species Act prohibits the harm or harassment of individuals of listed species. Prohibitions against take would be present regardless of whether or not critical habitat has been designated. If areas designated as critical habitat do not have individuals of the listed species present, no take in the form of harm or harassment would occur from activities on these areas and no section 9 prohibitions would be in force. However, effects from activities in unoccupied habitat that extend downstream to areas occupied by a listed species could result in take, regardless of whether or not critical habitat has been designated.

Summary of Changes From the Proposed Rule

There have been a number of minor changes from the text of the proposed rule. We corrected errors in mileages and locations and made other minor technical changes, additions, and deletions. We incorporated information from comments into the text and have made clarifications in response to comments.

In response to several comments, we clarified the lateral extent of critical habitat designation. Where delineated, this will be the 100-year floodplain of the designated waterways as defined by the U.S. Army Corps of Engineers. In areas where the 100-year floodplain has not been delineated or it is in dispute, the presence of alluvial soils (soils deposited by streams), obligate and facultative riparian vegetation (requiring and usually occurring in wetlands, respectively), abandoned river channels, or known high water marks can be used to determine the extent of the floodplain. We have also clarified that existing human-constructed features and structures within the critical habitat boundaries are not considered part of the critical habitat.

In response to a comment, we incorporated references to the October 6, 1999 amendment to the September 20, 1999 court order into this Final Rule.

We added a section titled ''Exclusion for Economic and Other Relevant Impacts'' to this Final Rule. We excluded the Fort Apache, San Carlos Apache, and Yavapai Apache Indian Reservation lands under the provisions of section 4(b)(2) of the Act.

We removed all stream reaches in complex 2, the Black River forks, from the critical habitat designation for spikedace for biological reasons. Comments received pointed out that the area is too high in elevation to have sufficient recovery potential for spikedace.

Required Determinations

Regulatory Planning and Review

In accordance with Executive Order 12866, this document is a significant rule and has been reviewed by the Office of Management and Budget (OMB), under Executive Order 12866. We prepared an economic analysis of the proposed action to determine the economic consequences of designating the specific areas as critical habitat. Table 5 summarizes the expected impacts of designating critical habitat for spikedace and loach minnow. The draft economic analysis was available for public review and comment during the comment period on the proposed rule. The final economic analysis is available for public review (see **ADDRESSES** section of this rule). We determined that this rule will not significantly impact entitlements, grants, user fees, loan programs, or the rights and obligations of their recipients (see Exclusion for Economic and Other Relevant Impacts section of this final rule). This rule will not raise novel legal or policy issues.

TABLE 5.—IMPACTS OF DESIGNATING CRITICAL HABITAT FOR SPIKEDACE AND LOACH MINNOW

Categories of activities	Activities potentially affected by the designation of critical habitat in areas occupied by the species (above those from listing the species)	Activities potentially affected by the designation of critical habitat in unoccupied areas
Federal Activities Potentially Affected [1].	None	Activities such as those affecting waters of the United States by the Army Corps of Engineers under section 404 of the Clean Water Act; road construction and maintenance, right-of-way designation, and regulation of agricultural activities; construction of roads and fences along the international border with Mexico and associated immigration enforcement activities by the Immigration and Naturalization Service; construction of communication sites licensed by the Federal Communications Commission; and activities funded by any Federal agency.
Private or other non-Federal Activities Potentially Affected [2].	None	Activities that require a Federal action (permit, authorization, or funding) and that involve such activities as removing or destroying spikedace or loach minnow habitat (as defined in the primary constituent elements discussion) whether by mechanical, chemical, or other means (*e.g.,* water diversions, grading, etc.); and that appreciably decrease habitat value or quality through indirect effects (*e.g.,* edge effects, invasion of exotic plants or animals, or fragmentation).

[1] Activities initiated by a Federal agency.
[2] Activities initiated by a private or other non-Federal entity that may need Federal authorization or funding.

Regulatory Flexibility Act (5 U.S.C. 601 et seq.)

In the economic analysis (under section 4 of the Act), we determined that designation of critical habitat will not have a significant effect on a substantial number of small entities (see also our discussion in the Exclusion for Economic and Other Relevant Impacts section of this final rule). We determined that the designation of critical habitat will not have any additional effects on these activities in areas of critical habitat occupied by the species. We also determined that there would be some, but not a significant, additional effect for the unoccupied area of critical habitat.

Small Business Regulatory Enforcement Fairness Act (5 U.S.C. 804(2))

In our economic analysis, we determined that designation of critical habitat will not cause (a) Any effect on the economy of $100 million or more, (b) any increases in costs or prices for consumers; individual industries; Federal, State, or local government agencies; or geographic regions, or (c) any significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of U.S.-based enterprises to compete with foreign-based enterprises.

Unfunded Mandates Reform Act (2 U.S.C. 1501 et seq.)

As outlined in our economic analysis, this rule does not impose an unfunded mandate on State, local or tribal governments or the private sector of more than $100 million or greater in any year. The designation does not have a significant or unique effect on State, local, or tribal governments, or the private sector. It is not necessary to provide a statement of the information required by the Unfunded Mandates Reform Act (2 U.S.C. 1531 *et seq.*). Small governments will be affected only to the extent that any programs having Federal funds, permits or other authorized activities must ensure that their actions will not destroy or adversely modify the critical habitat. However, as discussed above, these actions are currently subject to equivalent restrictions through the listing protections of the species, and no further restrictions are anticipated in areas of occupied proposed critical habitat. We expect little additional effect for the unoccupied areas of critical habitat, since unoccupied habitat that occurs on State or other governmental land (other than Federal) is only 40 km (24 mi) of stream, or only 6 percent of the unoccupied habitat we designated. There is no effect on Tribal land since we are not designating any Tribal land as critical habitat.

Takings

In accordance with Executive Order 12630, this rule does not have significant takings implications, and a takings implication assessment is not required. This designation will not ''take'' private property. Critical habitat designation is only applicable to Federal lands and to private lands if a Federal nexus exists. We do not designate lands as critical habitat unless the areas are essential to the conservation of a species. The rule will not increase or decrease the current restrictions on private property concerning take of spikedace or loach minnow. Due to current public knowledge of the species protection, the prohibition against take of these species both within and outside of the designated areas, and the fact that critical habitat provides no incremental restrictions in areas of occupied critical habitat, we do not anticipate that property values will be affected by the critical habitat designation. We expect little additional effect for the unoccupied area of critical habitat since the land on which we might expect some additional effect due to critical habitat designation, should a Federal nexus exist (unoccupied nonFederal land), is only approximately 17 percent of the total area designated. Additionally, critical habitat designation does not preclude development of habitat conservation plans and issuance of incidental take permits. Landowners in areas that are included in the designated critical habitat will continue to have opportunity to utilize their property in ways consistent with the survival of the spikedace and loach minnow.

Federalism

In accordance with Executive Order 13132, this designation will not affect the structure or role of States, and will not have direct, substantial, or significant effects on States. A Federalism assessment is not required. As previously stated, critical habitat is applicable to Federal lands and to non-Federal lands only when a Federal nexus exists. In keeping with Department of the Interior policy, we requested information from and coordinated development of this critical habitat designation with appropriate State resource agencies in Arizona and New Mexico. In addition, both States have representatives on our recovery team for these species. We will continue to coordinate any future designation of critical habitat for spikedace and loach minnow with the appropriate State agencies. The designation of critical habitat in areas currently occupied by the spikedace and loach minnow imposes no additional restrictions to those currently in place and, therefore, has little incremental impact on State and local governments and their activities. The designation of critical habitat in areas unoccupied by the spikedace and loach minnow may have some incremental impact on State and local governments and their activities that have Federal funding, permits, or authorization. The incremental impact would come from the need to consult with us under section 7 of the Act to ensure that these actions will not destroy or adversely modify the critical habitat. The designation may have some benefit to these governments in that the areas essential to the conservation of the species are more clearly defined, and the primary constituent elements of the habitat necessary to the survival of the species are specifically identified. While making this definition and identification does not alter where and what federally sponsored activities may occur, it may assist these local governments in long-range planning (rather than waiting for case-by-case section 7 consultations to occur).

Civil Justice Reform

In accordance with Executive Order 12988, the Department of the Interior's Office of the Solicitor determined that this rule does not unduly burden the judicial system and meets the requirements of sections 3(a) and 3(b)(2) of the Order. We designate critical habitat in accordance with the provisions of the Act. We have made every effort to ensure that this final determination contains no drafting errors, provides clear standards, simplifies procedures, reduces burden, and is clearly written such that litigation risk is minimized.

Paperwork Reduction Act of 1995 (44 U.S.C. 3501 et seq.)

This rule does not contain any information collection requirements for which Office of Management and Budget approval under the Paperwork Reduction Act is required.

National Environmental Policy Act

It is our position that, outside the Tenth Circuit, we do not need to prepare environmental analyses as defined by NEPA in connection with designating critical habitat under the Endangered Species Act of 1973, as amended. We published a notice outlining our reasons for this determination in the **Federal Register** on October 25, 1983 (48 FR 49244). This assertion was upheld by the Ninth Circuit (*Douglas County* v. *Babbitt,* 48 F.3d 1495 (9th Cir. Ore. 1995), *cert. denied* 116 S. Ct. 698 (1996)). However, when the ranges of the species include States within the Tenth Circuit, such as those of the spikedace and loach minnow, pursuant to the Tenth Circuit ruling in *Catron County Board of Commissioners* v. *U.S. Fish and Wildlife Service,* 75 F.3d 1429 (10th Cir. 1996), we must undertake a NEPA analysis for critical habitat designation. We have prepared a final Environmental Assessment on this action as required by NEPA. As a result of that analysis, we found that the designation of critical habitat for the spikedace and loach

minnow does not constitute a major Federal action significantly affecting the quality of the human environment under the meaning of section 102(2)(c) of NEPA. As such, an environmental impact statement is not required. Send your requests for copies of the final EA and FONSI for this designation to the Arizona Ecological Services Office (see **ADDRESSES** section).

References Cited

A complete list of all references cited in this final rule is available upon request from the Arizona Ecological Services Office (see **ADDRESSES** section).

Authors. The primary authors of this final rule are Paul J. Barrett and Sally E. Stefferud (see **ADDRESSES** section).

List of Subjects in 50 CFR Part 17

Endangered and threatened species, Exports, Imports, Reporting and recordkeeping requirements, Transportation.

Regulation Promulgation

Accordingly, we amend part 17, subchapter B of chapter I, title 50 of the Code of Federal Regulations as set forth below:

PART 17—[AMENDED]

1. The authority citation for part 17 continues to read as follows:

Authority: 16 U.S.C. 1361–1407; 16 U.S.C. 1531–1544; 16 U.S.C. 4201–4245; Pub. L. 99–625, 100 Stat. 3500; unless otherwise noted.

2. Amend § 17.11(h), by revising the entry for ''minnow, loach'' and ''spikedace'' under ''FISHES'' to read as follows:

§ 17.11 Endangered and threatened wildlife.

* * * * *

(h) * * *

Species		Historical range	Vertebrate population where endangered or threatened	Status	When listed	Critical habitat	Special rules
Common name	Scientific name						
*	*	*	*	*	*		*
FISHES							
*	*	*	*	*	*		*
Minnow, loach	*Tiaroga (=Rhinichthys) cobitis.*	U.S.A. (AZ, NM) Mexico.	entire	T	247	§ 17.95(e)	NA
*	*	*	*	*	*		*
Spikedace	*Meda fulgida*	U.S.A. (AZ, NM), Mexico.	entire	T	236	§ 17.95(e)	NA
*	*	*	*	*	*		*

3. Amend section 17.95(e) by adding critical habitat for the spikedace (*Meda fulgida*) in the same alphabetical order as this species occurs in 17.11(h).

§ 17.95 Critical habitat—fish and wildlife.

* * * * *

(e) Fishes.

* * * * *

Spikedace (*Meda fulgida*)

1. Critical habitat units are depicted for Cochise, Gila, Graham, Greenlee, Pima, Pinal, and Yavapai Counties, Arizona; and Catron, Grant, and Hidalgo Counties, New Mexico, on the maps and as described below.

2. Critical habitat includes the stream channels within the identified stream reaches described below and areas within these reaches potentially inundated by high flow events. Where delineated, this is the 100-year floodplain of the designated waterways as defined by the U.S. Army Corps of Engineers. In areas where the 100-year floodplain has not been delineated or it is in dispute, the presence of alluvial soils (soils deposited by streams), obligate and facultative riparian vegetation (requiring and usually occurring in wetlands respectively), abandoned river channels, or known high water marks can be used to determine the extent of the floodplain. Within these areas, only lands which provide the primary constituent elements or which will be capable, with restoration, of providing them, are considered critical habitat. Existing human-constructed features and structures such as buildings, roads, etc., are not considered critical habitat.

3. Within these areas, the primary constituent elements include, but are not limited to, those habitat components that are essential for the primary biological needs of foraging, sheltering, dispersal, and reproduction. These elements include the following: (1) Permanent, flowing, unpolluted water; (2) living areas for adult spikedace with slow to swift flow velocities in shallow water with shear zones where rapid flow borders slower flow, areas of sheet flow at the upper ends of mid-channel sand/gravel bars, and eddies at downstream riffle edges; (3) living areas for juveniles with slow to moderate water velocities in shallow water with moderate amounts of instream cover; (4) living areas for the larval stage with slow to moderate flow velocities in shallow water with abundant instream cover; (5) sand, gravel, and cobble substrates with low to moderate amounts of fine sediment and substrate embeddedness; (6) pool, riffle, run, and backwater components of the streams; (7) low stream gradient; (8) water temperatures in the approximate range of 1–30° C (35–85° F) with natural diurnal and seasonal variation; (9) abundant aquatic insect food base; (10) periodic natural flooding; (11) a natural, unregulated hydrograph, or if flows are modified or regulated, then a hydrograph that demonstrates an ability to support a native fish community; and (12) habitat devoid of nonnative aquatic species detrimental to spikedace, or habitat in which detrimental nonnative species are at levels which allow persistence of spikedace.

4. Arizona (Gila and Salt River Meridian (GSRM) and New Mexico (New Mexico Principal Meridian (NMPM)): Areas of land and water as follows (physical features were identified using USGS 7.5′ quadrangle maps; river reach distances were derived from digital data obtained from Arizona Land Resources Information System (ALRIS) and New Mexico Resource Geographic Information System (RGIS)):

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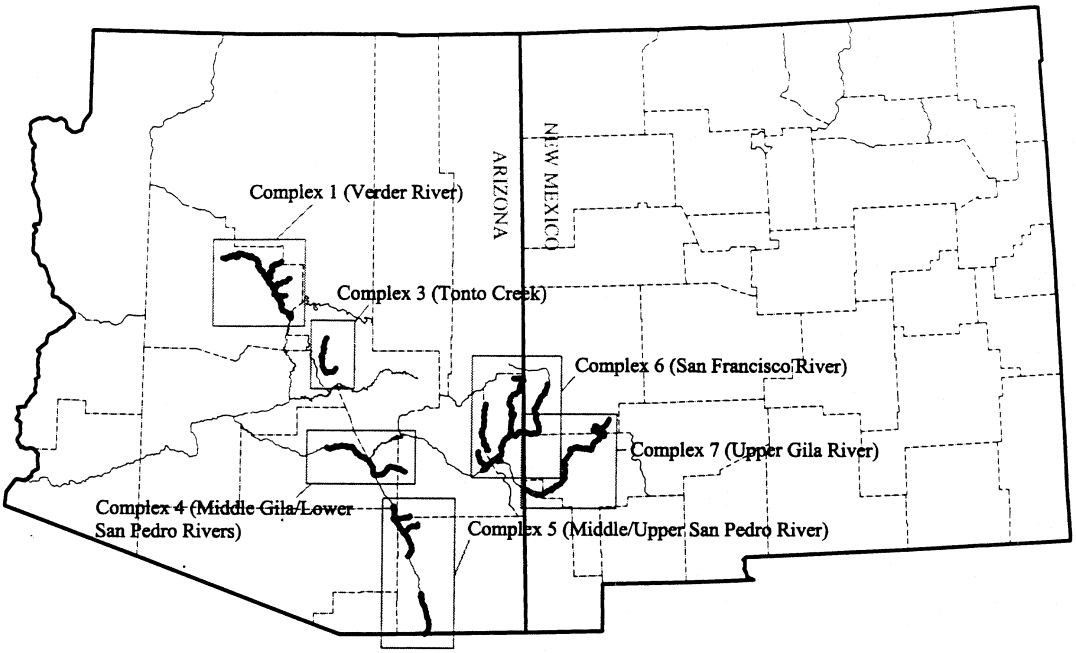
Map 1. Locations of river complexes for spikedace (*Meda fulgida*) in Arizona and New Mexico.



Spikedace (*Meda fulgida*)

Complex 1. Yavapai and Gila Counties, Arizona

a. Verde River for approximately 171.3 km (106.5 mi), extending from the confluence with Fossil Creek in GSRM, T.11N., R.6E., NE¼ Sec. 25 upstream to Sullivan Dam in GSRM, T.17N., R.2W., NW¼ Sec. 15.

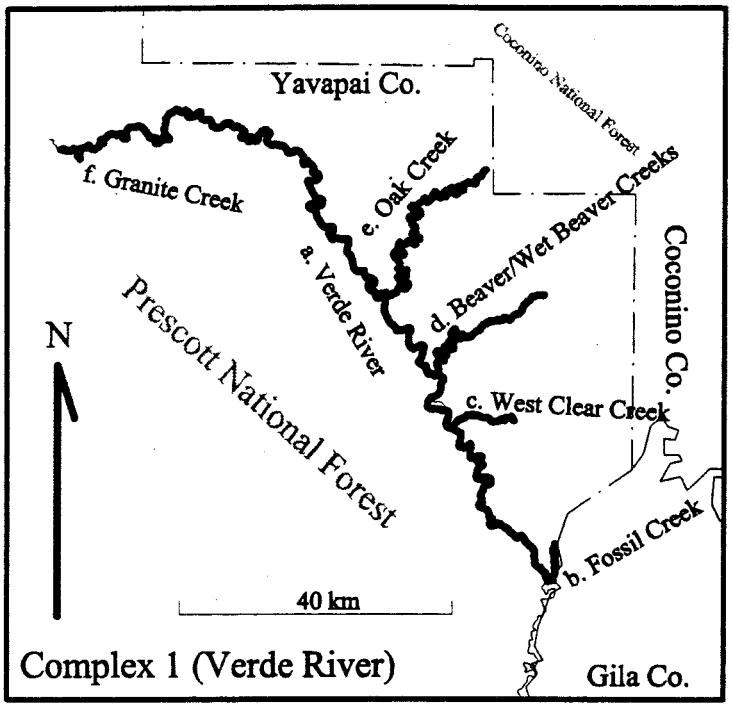
b. Fossil Creek for approximately 7.6 km (4.7 mi), extending from the confluence with the Verde River in GSRM, T.11.N., R.6E., NE¼ Sec. 25 upstream to the confluence with an unnamed tributary from the northwest in GSRM, T.11 ½N., R.7E., center Sec. 29.

c. West Clear Creek for approximately 11.6 km (7.2 mi), extending from the confluence with the Verde River in GSRM, T.13N., R.5E., center Sec. 21, upstream to the confluence with Black Mountain Canyon in GSRM, T.13N., R.6E., SE¼ Sec. 17.

d. Beaver Creek/Wet Beaver Creek for approximately 33.4 km (20.8mi), extending from the confluence with the Verde River in GSRM, T.14N., R.5E., SE¼ Sec. 30 upstream to the confluence with Casner Canyon in GSRM, T.15N., R.6E., NW¼ Sec. 23.

e. Oak Creek for approximately 54.4 km (33.8 mi), extending from the confluence with the Verde River in GSRM, T.15N., R.4E., SE¼ Sec. 20 upstream to the confluence with an unnamed tributary from the south in GSRM, T.17N., R.5E., SE¼, NE¼ Sec. 24.

f. Granite Creek for approximately 2.3 km (1.4 mi), extending from the confluence with the Verde River in GSRM, T.17N., R.2W., NE¼ Sec. 14 upstream to a spring in GSRM, T.17N., R.2W., SW¼, SW¼, Sec. 13.

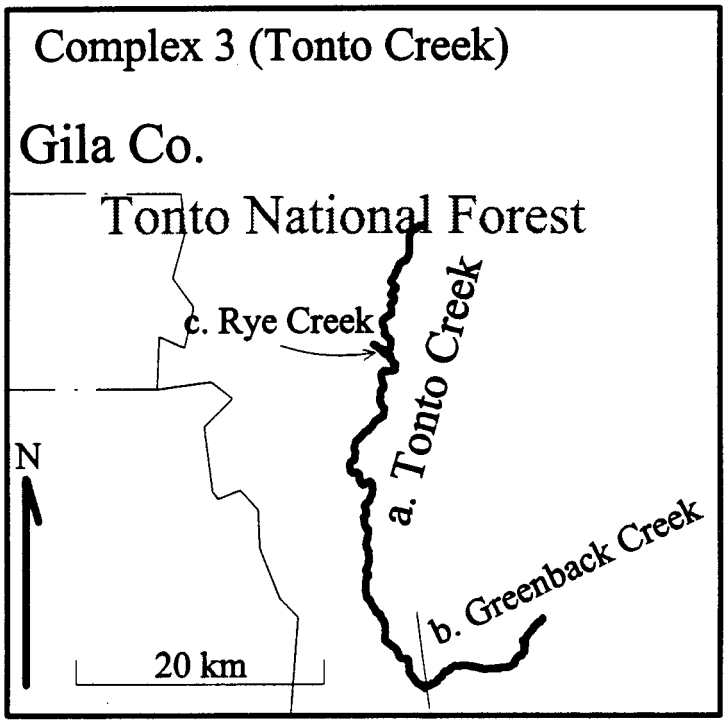


Complex 3. Gila County, Arizona

a. Tonto Creek for approximately 47.0 km (29.2 mi), extending from the confluence with Greenback Creek in GSRM, T.5N., R.11E., NW¼ Sec. 8 upstream to the confluence with Houston Creek in GSRM, T.9N., R.11E., NE¼, Sec. 18.

b. Greenback Creek for approximately 13.5 km (8.4 mi), extending from the confluence with Tonto Creek in GSRM, T.5N., R.11E., NW¼ Sec. 8 upstream to Lime Springs in GSRM, T.6N., R.12E., SW¼ Sec. 20.

c. Rye Creek for approximately 2.1 km (1.3 mi), extending from the confluence with Tonto Creek in GSRM, T.8N., R.10E., SW¼ Sec. 13 upstream to the confluence with Brady Canyon in GSRM, T.8N., R.10E., NE¼ Sec. 14.

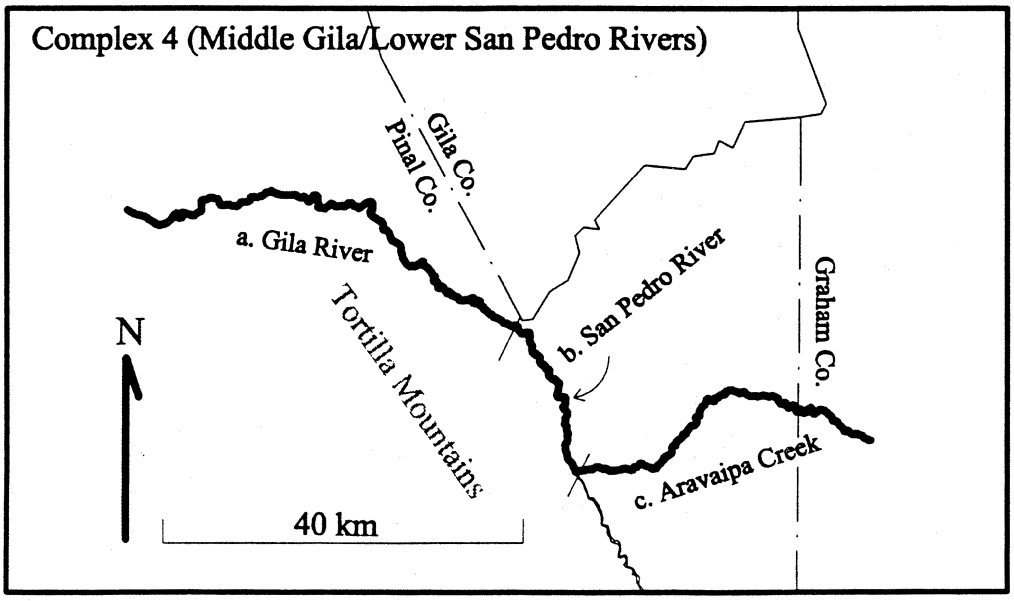


Complex 4. Graham, and Pinal Counties, Arizona

a. Gila River for approximately 62.8 km (39.0 mi), extending from Ashurst-Hayden Dam in GSRM, T.4S., R.11E., NW¼ Sec. 8 upstream to the confluence with the San Pedro River in GSRM, T.5S., R.15E., center Sec. 23.

b. San Pedro River for approximately 21.4 km (13.3 mi), extending from the confluence with the Gila River in GSRM, T.5S., R.15E., center Sec. 23 upstream to the confluence with Aravaipa Creek in GSRM, T.7S., R.16E., center Sec. 9.

c. Aravaipa Creek for approximately 45.3 km (28.1 mi), extending from the confluence with the San Pedro River in GSRM, T.7S., R.16E., center Sec. 9 upstream to the confluence with Stowe Gulch in GSRM, T.6S., R.19E., SE¼ of the NE¼ Sec. 35.



Complex 5. Cochise, Graham, and Pima Counties, Arizona

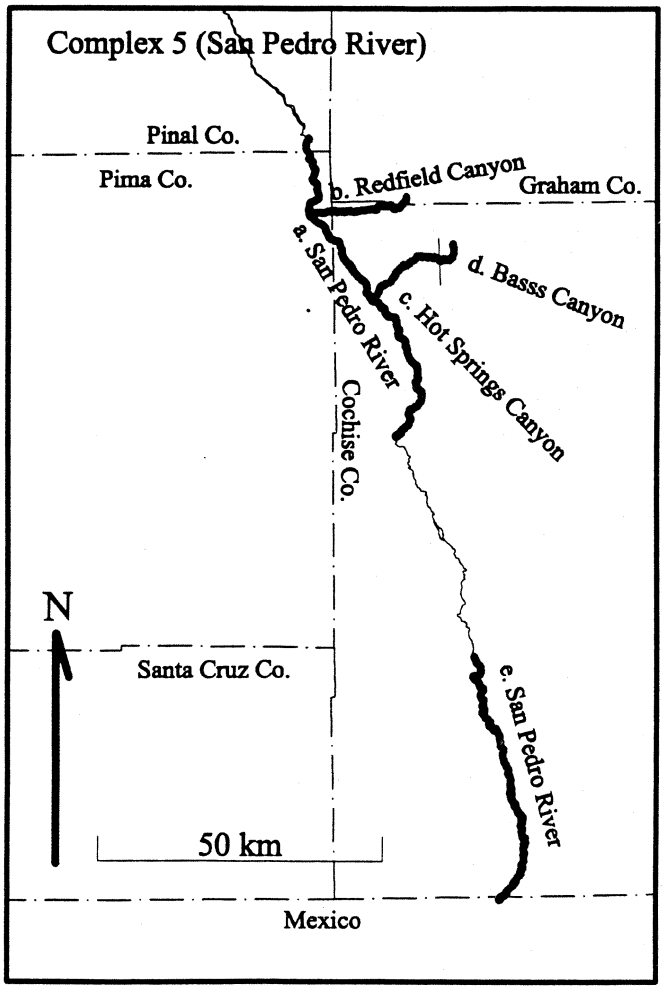
a. San Pedro River for approximately 73.6 km (45.8 mi), extending from the confluence with Alder Wash in GSRM, T.10S., R.18E., SW¼ Sec.22 upstream to the confluence with Ash Creek in GSRM, T.16S., R.20E., SE¼ Sec. 6.

b. Redfield Canyon for approximately 22.3 km (13.9 mi), extending from the confluence with the San Pedro River in GSRM, T.11S., R.18E., SW¼ Sec. 34 upstream to the confluence with Sycamore Canyon in GSRM, T.11S., R.20E., NW¼ Sec. 28.

c. Hot Springs Canyon for approximately 19.1 km (11.8 mi), extending from the confluence with the San Pedro River in GSRM, T.13S., R.19E., west center Sec.23 upstream to the confluence with Bass Canyon in GSRM, T.12S., R.20E., NE¼ Sec. 36.

d. Bass Canyon for approximately 5.1 km (3.2 mi), extending from the confluence with Hot Springs Canyon in GSRM, T.12S., R.20E., NE¼ Sec. 36 upstream to the confluence with Pine Canyon in GSRM, T.12S., R.21E., center Sec. 20.

e. San Pedro River for approximately 60.0 km (37.2 mi), extending from the confluence with the Babocomari River in the San Juan de las Boquillas y Nogales land grant upstream to the U.S. border with Mexico in GSRM, T.24S., R.22E., Sec. 19.



Complex 6. Graham and Greenlee Counties, Arizona and Catron County, New Mexico

a. Gila River for approximately 36.3 km (22.6 mi), extending from the Brown Canal diversion at the head of the Safford Valley in GSRM, T.6S., R.28E., SE¼ Sec. 30 upstream to the confluence with Owl Canyon in GSRM, T.5S., R.30E., SW¼ Sec. 30.

b. Bonita Creek for approximately 23.5 km (14.6 mi), extending from the confluence with the Gila River in GSRM, T.6S., R.28E., SE¼ Sec. 21 upstream to the confluence with Martinez Wash in GSRM, T.4S., R.27E., SE¼ Sec.27.

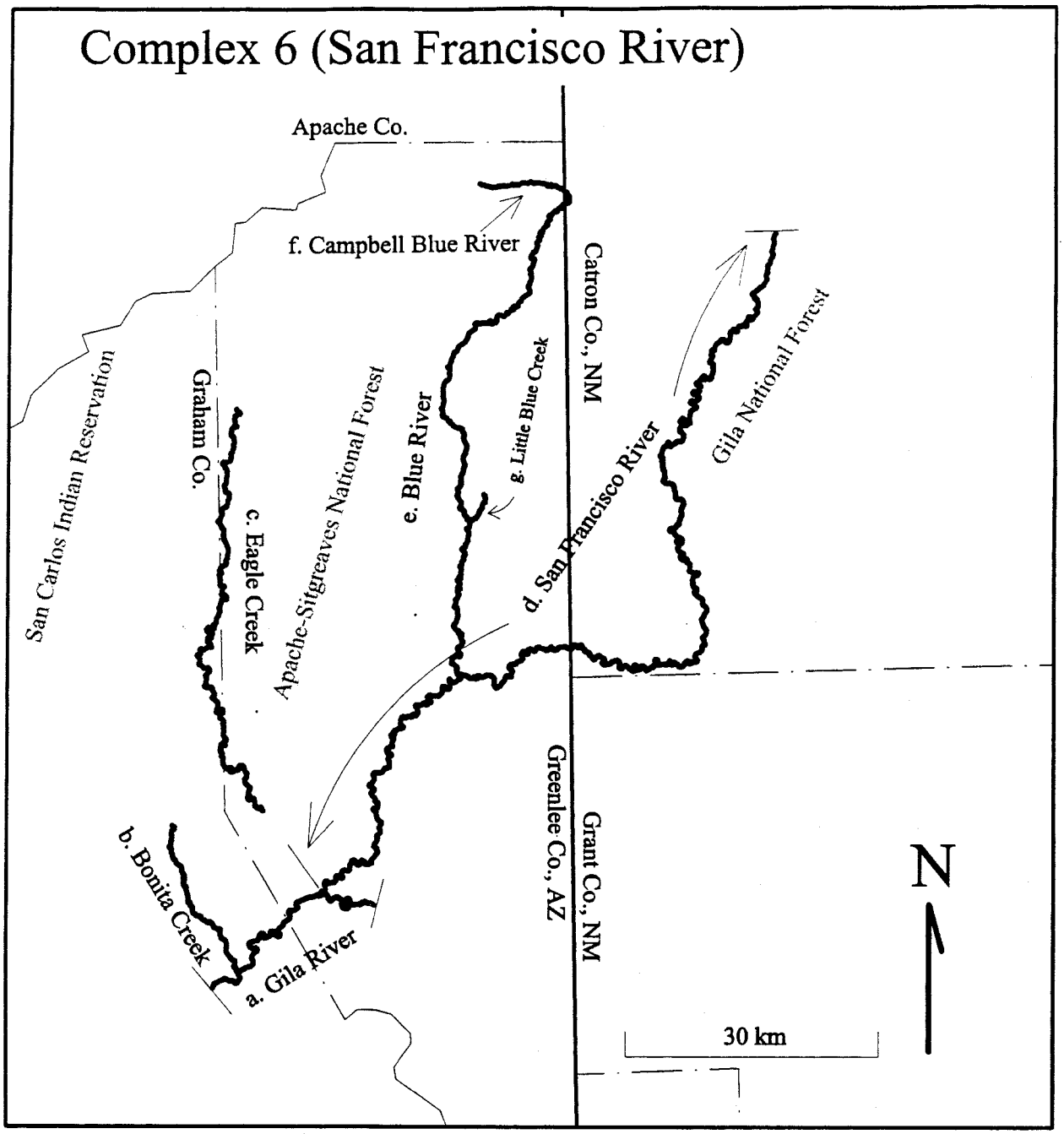
c. Eagle Creek for approximately 72.8 km (45.2 mi), extending from the Phelps-Dodge diversion dam in GSRM, T.4S., R.28E., NW¼ Sec. 23 upstream to the confluence of Dry Prong and East Eagle Creeks in GSRM, T.2N., R.28E., SW¼ Sec. 20, excluding lands on the San Carlos Apache Indian Reservation.

d. San Francisco River for approximately 181.5 km (113.2 mi), extending from the confluence with the Gila River in GSRM, T.5S., R.29E., SE¼ Sec. 21 upstream to the confluence with the Tularosa River in the NMPM, T.7S., R.19W., SW¼ Sec. 23.

e. Blue River for approximately 81.9 km (51.0 mi), extending from the confluence with the San Francisco River in GSRM, T.2S., R.31E., SE¼ Sec. 31 upstream to the confluence of Campbell and Dry Blue Creeks in NMPM, T.7S., R.21W., SE¼ Sec. 6.

f. Campbell Blue Creek for approximately 13.1 km (8.2 mi), extending from the confluence with Dry Blue Creek in NMPM, T.7S., R.21W., SE¼ Sec. 6 upstream to the confluence with Coleman Creek in GSRM, T.4 ½ N., R.31E., SW¼ of the NE¼ Sec. 32.

g. Little Blue Creek for approximately 4.5 km (2.8 mi), extending from the confluence with the Blue River in GSRM, T.1S., R.31E., center Sec. 5 upstream to the mouth of a box canyon in GSRM, T.1N., R.31E., NE¼ SE¼ Sec. 29.



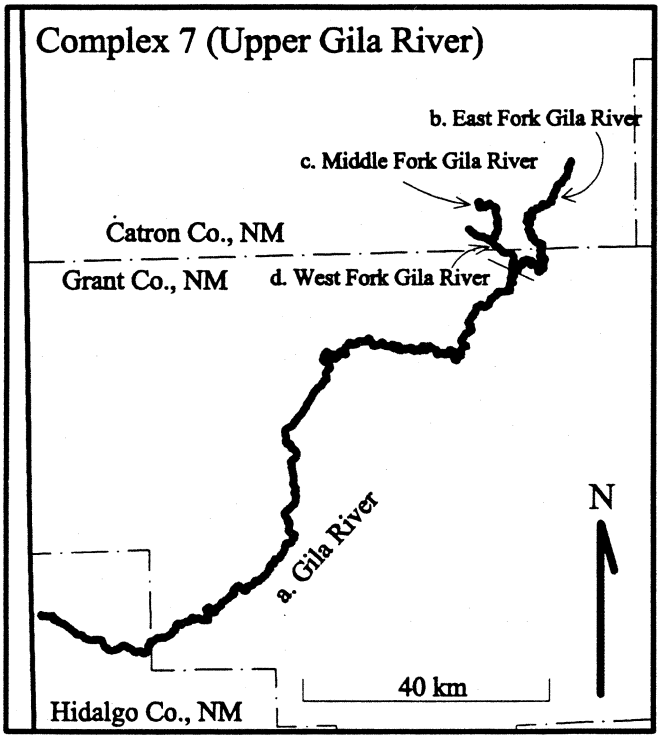
Complex 7. Grant and Catron Counties, New Mexico

a. Gila River for approximately 164.4 km (102.2 mi), extending from the confluence with Moore Canyon in NMPM, T.18S., R.21W., SE¼ SW¼ Sec. 31 upstream to the confluence of the East and West Forks of the Gila River in NMPM, T.13S., R.13W., center Sec. 8.

b. East Fork Gila River for approximately 42.1 km (26.1 mi), extending from the confluence with the West Fork Gila River in NMPM, T.13S., R.13W., center Sec. 8 upstream to the confluence of Beaver and Taylor Creeks in NMPM, T.11S., R.12W., NE¼ Sec. 17.

c. Middle Fork Gila River for approximately 12.3 km (7.7 mi), extending from the confluence with the West Fork Gila River in NMPM, T.12S., R.14W., SW¼ Sec. 25 upstream to the confluence with Big Bear Canyon in NMPM, T.12S., R.14W., NW¼ Sec. 2.

d. West Fork Gila River for approximately 12.4 km (7.7 mi), extending from the confluence with the East Fork Gila River in NMPM, T.13S., R.13W., center Sec. 8 upstream to the confluence with EE Canyon in NMPM, T.12S., R.14W., east boundary of Sec. 21.



* * * * *

4. Amend section 17.95(e) by adding critical habitat for the loach minnow (*Tiaroga* (= *Rhinichthys*) *cobitis*) in the same alphabetical order as this species occurs in 17.11(h):

§ 17.95 Critical habitat—fish and wildlife.

* * * * *

(e) Fishes.

* * * * *

LOACH MINNOW (*Tiaroga* (=*Rhinichthys*) *cobitis*)

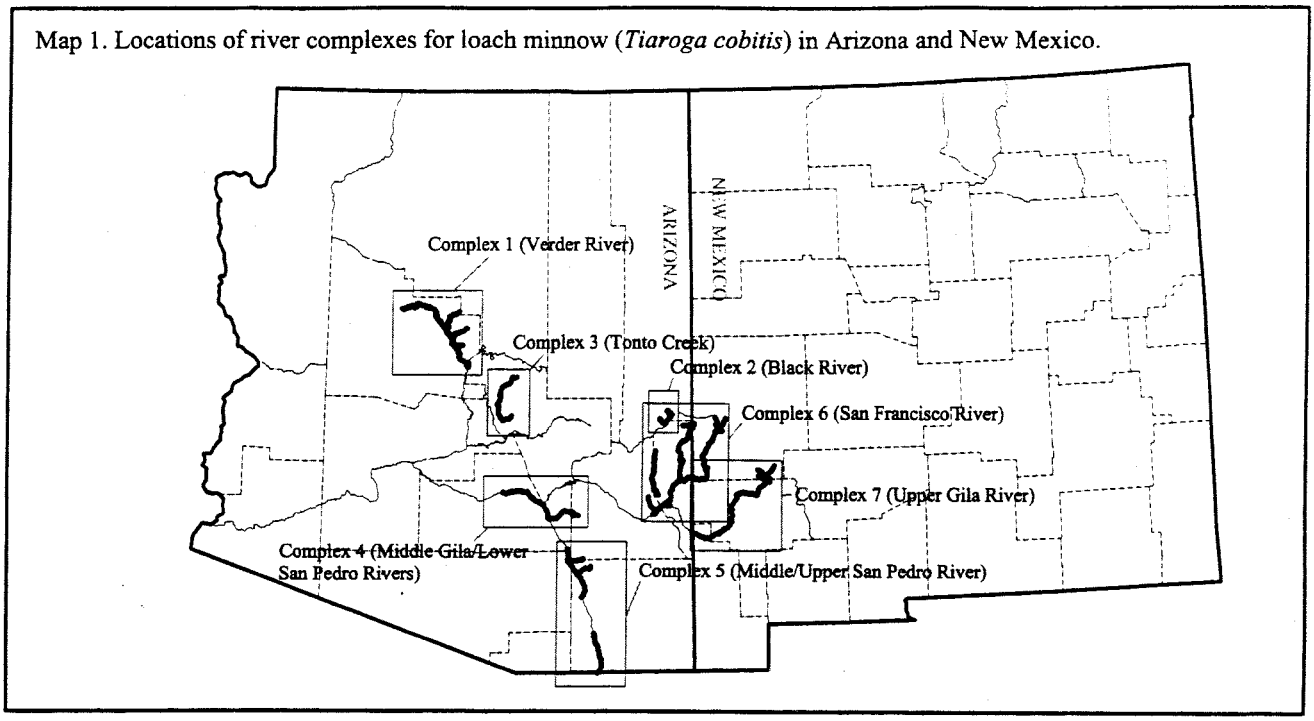
1. Critical habitat units are depicted for Apache, Cochise, Gila, Graham, Greenlee, Pima, Pinal, and Yavapai Counties, Arizona; and Catron and Grant Counties, New Mexico on the maps and as described below.

2. Critical habitat includes the stream channels within the identified stream reaches described below and areas within these reaches potentially inundated by high flow events. Where delineated, this is the 100-year floodplain of the designated waterways as defined by the U.S. Army Corps of Engineers. In areas where the 100-year floodplain has not been delineated or it is in dispute, the presence of alluvial soils (soils deposited by streams), obligate and facultative riparian vegetation (requiring and usually occurring in wetlands respectively), abandoned river channels, or known high water marks can be used to determine the extent of the floodplain. Within these areas, only lands which provide the primary constituent elements or which will be capable, with restoration, of providing them, are considered critical habitat. Existing human-constructed features and structures such as buildings, roads, etc., are not considered critical habitat.

3. Within these areas, the primary constituent elements include, but are not limited to, those habitat components that are essential for the primary biological needs of foraging, sheltering, dispersal, and reproduction. These elements include the following: (1) Permanent flowing, unpolluted water; (2) living areas for adult loach minnow with moderate to swift flow velocities in shallow water with gravel, cobble, and rubble substrates; (3) living areas for juvenile loach minnow with moderate to swift flow velocities in shallow water with sand, gravel, cobble, and rubble substrates; (4) living areas for larval loach minnow with slow to moderate velocities in shallow water with sand, gravel, and cobble substrates and abundant instream cover; (5) spawning areas with slow to swift flow velocities in shallow water with uncemented cobble and rubble substrate; (6) low amounts of fine sediment and substrate embeddedness; (7) riffle, run, and backwater components present in the aquatic habitat; (8) low to moderate stream gradient; (9) water temperatures in the approximate range of 1–30 °C (35–85 °F) with natural diurnal and seasonal variation; (10) abundant aquatic insect food base; (11) periodic natural flooding; (12) a natural, unregulated hydrograph, or if flows are modified or regulated, then a hydrograph that demonstrates a retained ability to support a native fish community; and (13) habitat devoid of nonnative aquatic species detrimental to loach minnow, or habitat in which detrimental nonnative species are at levels which allow persistence of loach minnow.

4. Arizona (Gila and Salt River Meridian (GSRM)) and New Mexico (New Mexico Principal Meridian (NMPM)): Areas of land and water as follows (physical features were identified using USGS 7.5′ quadrangle maps; river reach distances were derived from digital data obtained from Arizona Land Resources Information System (ALRIS) and

New Mexico Resource Geographic Information System (RGIS)):



LOACH MINNOW (*Tiaroga* (=*Rhinichthys*) *cobitis*)

Complex 1. Yavapai, and Gila Counties, Arizona

a. Verde River for approximately 171.3 km (106.5 mi), extending from the confluence with Fossil Creek in GSRM, T.11N., R.6E., NE¼ Sec. 25 upstream to Sullivan Dam in GSRM, T.17N., R.2W., NW¼ Sec. 15, excluding lands on the Yavapai Apache Indian Reservation.

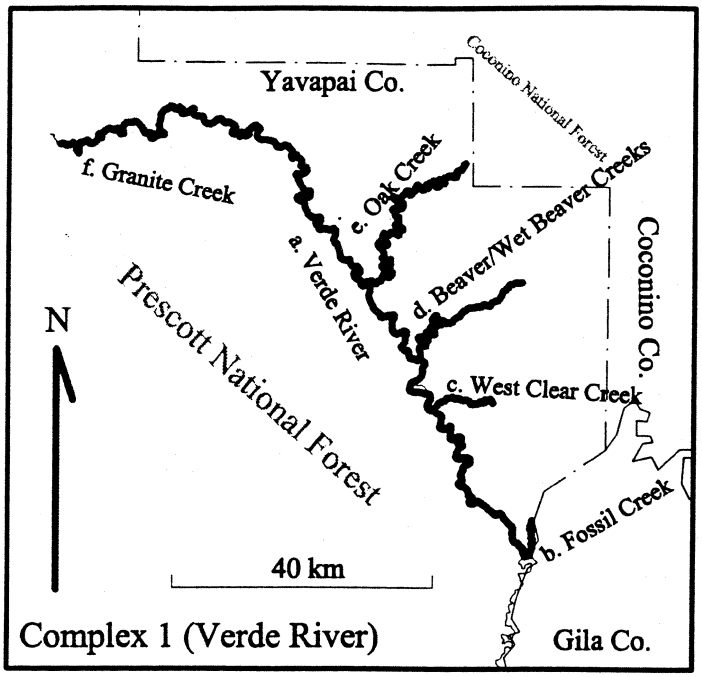
b. Fossil Creek for approximately 7.6 km (4.7 mi), extending from the confluence with the Verde River in GSRM, T.11N., R.6E., NE¼ Sec. 25 upstream to the confluence with an unnamed tributary from the northwest in GSRM, T.11 ½N., R.7E., center Sec. 29.

c. West Clear Creek for approximately 11.6 km (7.2 mi), extending from the confluence with the Verde River in GSRM, T.13N., R.5E., center Sec. 21, upstream to the confluence with Black Mountain Canyon in GSRM, T.13N., R.6E., SE¼ Sec. 17.

d. Beaver Creek/Wet Beaver Creek for approximately 33.4 km (20.8mi), extending from the confluence with the Verde River in GSRM, T.14N., R.5E., SE¼ Sec. 30 upstream to the confluence with Casner Canyon in GSRM, T.15N., R.6E., NW¼ Sec. 23.

e. Oak Creek for approximately 54.4 km (33.8 mi), extending from the confluence with the Verde River in GSRM, T.15N., R.4E., SE¼ Sec. 20 upstream to the confluence with an unnamed tributary from the south in GSRM, T.17N., R.5E., SE¼, NE¼ Sec. 24.

f. Granite Creek for approximately 2.3 km (1.4 mi), extending from the confluence with the Verde River in GSRM, T.17N., R.2W., NE¼ Sec. 14 upstream to a spring in GSRM, T.17N., R.2W., SW¼, SW¼, Sec. 13.



Complex 2. Apache and Greenlee Counties, Arizona

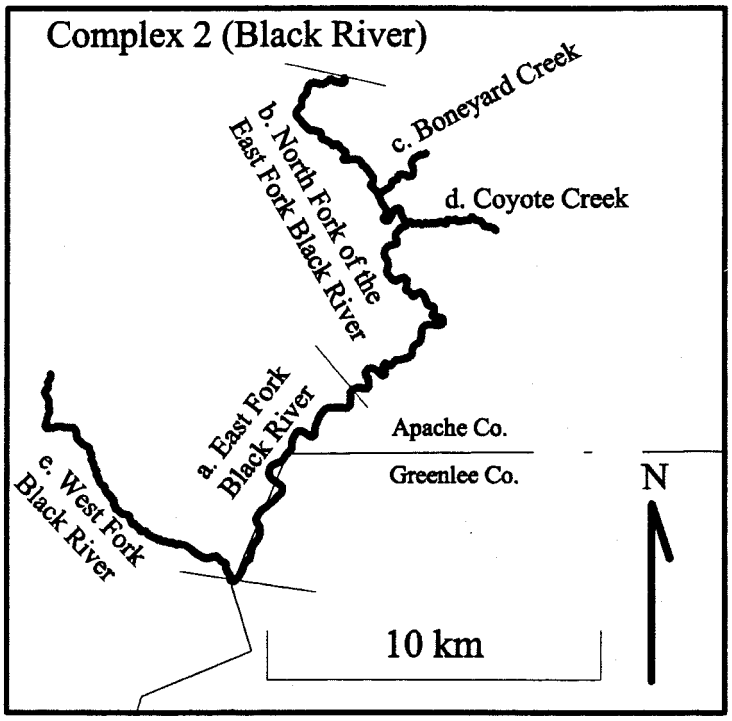
a. East Fork Black River for approximately 8.2 km (5.1 mi), extending from the confluence with the West Fork Black River in GSRM, T.4N., R.28E., SE¼ Sec. 11 upstream to the confluence with Deer Creek in GSRM, T.5N., R.29E., NW¼ Sec. 30.

b. North Fork of the East Fork Black River for approximately 18.0 km (11.2 mi), extending from the confluence of the East Fork Black River and Deer Creek in GSRM, T.5N., R.29E., NW¼ Sec. 30 upstream to the confluence with an unnamed tributary flowing from the east in GSRM, T.6N., R.29E., center Sec. 30.

c. Boneyard Creek for approximately 2.3 km (1.4 mi), extending from the confluence with the North Fork of the East Fork Black River in GSRM, T.5N, R.29E., SW¼ Sec. 5 upstream to the confluence with an unnamed tributary flowing from the east near Clabber City in GSRM, T.6N., R.29E., SE¼ SE¼ Sec. 32.

d. Coyote Creek for approximately 3.1 km (2.0 mi), extending from the confluence with the North Fork of the East Fork Black River in GSRM, T.5N., R.29E., NE¼ Sec. 8 upstream to the confluence with an unnamed tributary flowing from the south in GSRM, T.5N., R.19E., NW¼ Sec. 10.

e. West Fork Black River for approximately 10.3 km (6.4 mi), extending from the confluence with the East Fork Black River in GSRM, T.4N, R.28E., SE¼ Sec. 11 upstream to the confluence with Hay Creek in GSRM, T.5N., R.28E., SE¼, Sec. 19.

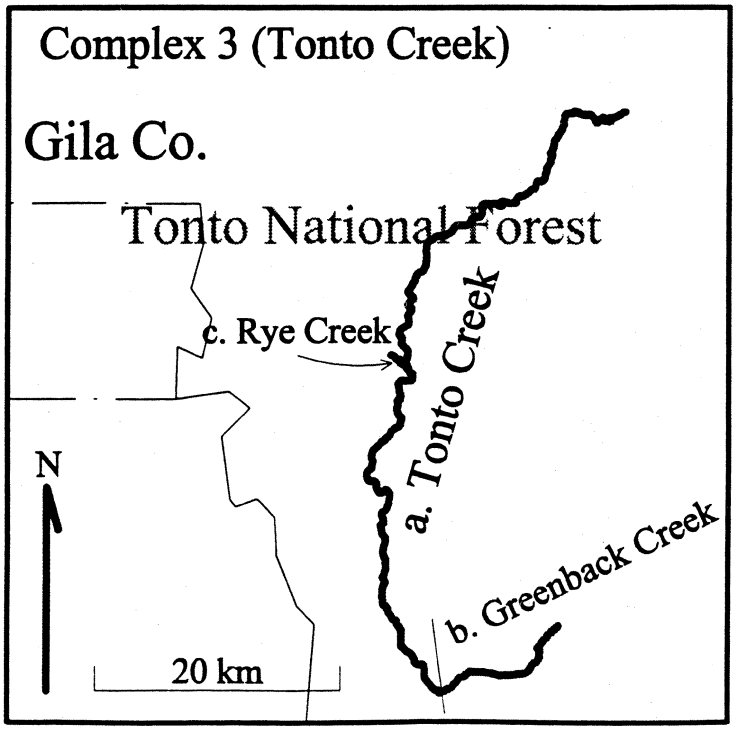


Complex 3. Gila County, Arizona

a. Tonto Creek for approximately 70.3 km (43.7 mi), extending from the confluence with Greenback Creek in GSRM, T.5N., R.11E., NW¼ Sec. 8 upstream to the confluence with Haigler Creek in GSRM, T.10N., R.12E., NW¼, Sec. 14.

b. Greenback Creek for approximately 13.5 km (8.4 mi), extending from the confluence with Tonto Creek in GSRM, T.5N., R.11E., NW¼ Sec. 8 upstream to Lime Springs in GSRM, T.6N., R.12E., SW¼ Sec. 20.

c. Rye Creek for approximately 2.1 km (1.3 mi), extending from the confluence with Tonto Creek in GSRM, T.8N., R.10E., SW¼ Sec. 13 upstream to the confluence with Brady Canyon in GSRM, T.8N., R.10E., NE¼ Sec. 14.



Complex 4. Graham and Pinal Counties, Arizona

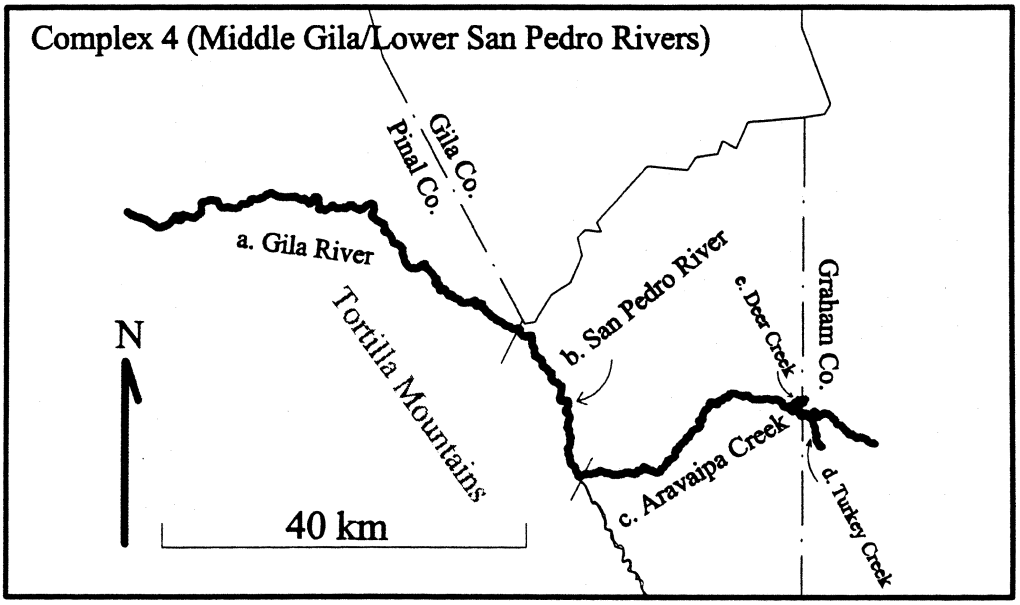
a. Gila River for approximately 62.8 km (39.0 mi), extending from Ashurst-Hayden Dam in GSRM, T.4S., R.11E., NW¼ Sec. 8 upstream to the confluence with the San Pedro River in GSRM, T.5S., R.15E., center Sec. 23.

b. San Pedro River for approximately 21.4 km (13.3 mi), extending from the confluence with the Gila River in GSRM, T.5S., R.15E., center Sec. 23 upstream to the confluence with Aravaipa Creek in GSRM, T.7S., R.16E., center Sec. 9.

c. Aravaipa Creek for approximately 45.3 km (28.1 mi), extending from the confluence with the San Pedro River in GSRM, T.7S., R.16E., center Sec. 9 upstream to the confluence with Stowe Gulch in GSRM, T.6S., R.19E., SE¼ of the NE¼ Sec. 35.

d. Turkey Creek for approximately 4.3 km (2.7 mi), extending from the confluence with Aravaipa Creek in GSRM, T.6S., R.19E., center Sec. 19 upstream to the confluence with Oak Grove Canyon in GSRM, T.6S., R.19E., SW¼ Sec. 32.

f. Deer Creek for approximately 3.6 km (2.3 mi), extending from the confluence with Aravaipa Creek in GSRM, T.6S., R.18E., SE¼ of the SE¼ Sec. 14 upstream to the boundary of the Aravaipa Wilderness at GSRM, T.6S., R.18E., east boundary Sec. 13.



Complex 5. Cochise, Graham, and Pima Counties, Arizona

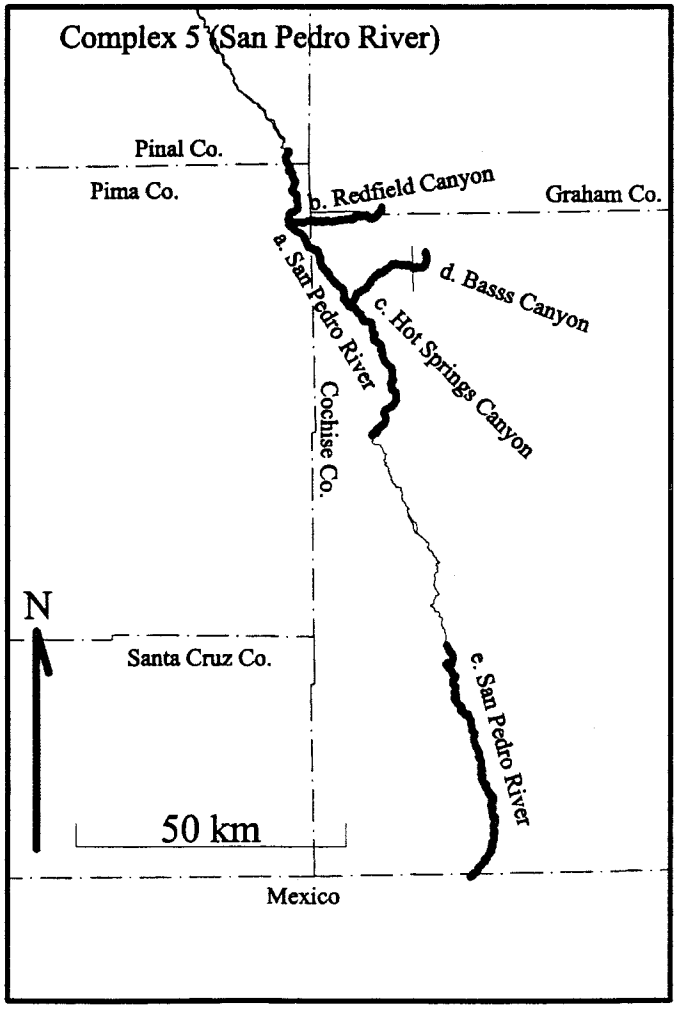
a. San Pedro River for approximately 73.6 km (45.8 mi), extending from the confluence with Alder Wash in GSRM, T.10S., R.18E., SW¼ Sec. 22 upstream to the confluence with Ash Creek in GSRM, T.16S., R.20E., SE¼ Sec. 6.

b. Redfield Canyon for approximately 22.3 km (13.9 mi), extending from the confluence with the San Pedro River in GSRM, T.11S., R.18E., SW¼ Sec. 34 upstream to the confluence with Sycamore Canyon in GSRM, T.11S., R.20E., NW¼ Sec. 28.

c. Hot Springs Canyon for approximately 19.1 km (11.8 mi), extending from the confluence with the San Pedro River in GSRM, T.13S., R.19E., west center Sec. 23 upstream to the confluence with Bass Canyon in GSRM, T.12S., R.20E., NE¼ Sec. 36.

d. Bass Canyon for approximately 5.1 km (3.2 mi), extending from the confluence with Hot Springs Canyon in GSRM, T.12S., R.20E., NE¼ Sec. 36 upstream to the confluence with Pine Canyon in GSRM, T.12S., R.21E., center Sec. 20.

e. San Pedro River for approximately 60.0 km (37.2 mi), extending from the confluence with the Babocomari River in the San Juan de las Boquillas y Nogales land grant upstream to the U.S. border with Mexico in GSRM, T.24S., R.22E., Sec. 19.



Complex 6. Graham and Greenlee Counties, Arizona and Catron County, New Mexico

a. Gila River for approximately 36.3 km (22.6 mi), extending from the Brown Canal diversion at the head of the Safford Valley in GSRM, T.6S., R.28E., SE¼ Sec. 30 upstream to the confluence with Owl Canyon in GSRM, T.5S., R.30E., SW¼ Sec. 30.

b. Bonita Creek for approximately 23.5 km (14.6 mi), extending from the confluence with the Gila River in GSRM, T.6S., R.28E., SE¼ Sec. 21 upstream to the confluence with Martinez Wash in GSRM, T.4S., R.27E., SE¼ Sec. 27.

c. Eagle Creek for approximately 72.8 km (45.2 mi), extending from the Phelps-Dodge diversion dam in GSRM, T.4S., R.28E., NW¼ Sec. 23 upstream to the confluence of Dry Prong and East Eagle Creeks in GSRM, T.2N., R.28E., SW¼ Sec. 20, excluding lands on the San Carlos Apache Indian Reservation.

d. San Francisco River for approximately 203.3 km (126.3 mi), extending from the confluence with the Gila River in GSRM, T.5S., R.29E., SE¼ Sec. 21 upstream to the mouth of The Box canyon in NMPM, T.6S., R.19W., SW¼ of the NW¼ Sec. 2.

e. Tularosa River for approximately 30.0 km (18.6 mi), extending from the confluence with the San Francisco River in NMPM, T.7S., R.19W., SW¼ Sec. 23 upstream to NMPM, T.6S., R.18W, south boundary Sec. 1.

f. Negrito Creek for approximately 6.8 km (4.2 mi), extending from the confluence with the Tularosa River in NMPM, T.7S., R.18W., SW¼ of the NW¼ Sec. 19 upstream to the confluence with Cerco Canyon in NMPM, T.7S., R.18W., west boundary Sec. 22.

g. Whitewater Creek for approximately 1.8 km (1.2 mi), extending from the confluence with the San Francisco River in NMPM, T.11S., R.20W., SE¼ Sec. 27 upstream to the confluence with Little Whitewater Creek in NMPM, T.11S., R.20W., SE¼ Sec. 23.

h. Blue River for approximately 81.9 km (51.0 mi), extending from the confluence with the San Francisco River in GSRM, T.2S., R.31E., SE¼ Sec. 31 upstream to the confluence of Campbell and Dry Blue Creeks in NMPM, T.7S., R.21W., SE¼ Sec. 6.

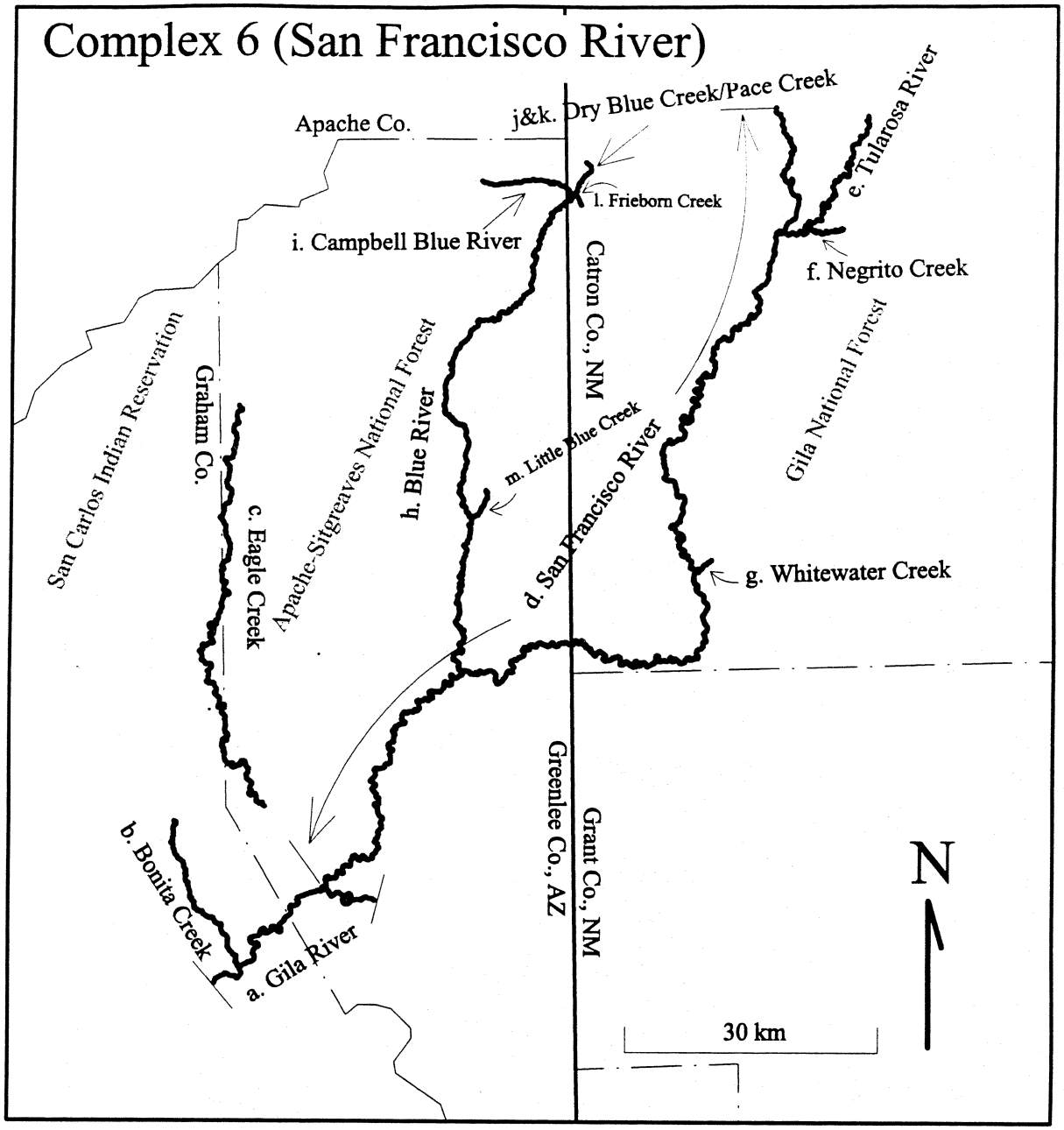
i. Campbell Blue Creek for approximately 13.1 km (8.2 mi), extending from the confluence with Dry Blue Creek in NMPM, T.7S., R.21W., SE¼ Sec. 6 upstream to the confluence with Coleman Creek in GSRM, T.4 ½ N., R.31E., SW¼ of the NE¼ Sec. 32.

j. Dry Blue Creek for approximately 4.7 km (3.0 mi), extending from the confluence with Campbell Blue Creek in NMPM, T.7S., R.21W., SE¼ Sec. 6 upstream to the confluence with Pace Creek in NMPM, T.6S., R.21W., SW¼ Sec. 28.

k. Pace Creek for approximately 1.2 km (0.8 mi), extending from the confluence with Dry Blue Creek in NMPM, T.6S., R.21W., SW¼ Sec. 28 upstream to the barrier falls in NMPM, T.6S., R.21W., SW¼ Sec. 28.

l. Frieborn Creek for approximately 1.8 km (1.2 mi), extending from the confluence with Dry Blue Creek in NMPM, T.7S., R.21W., SW¼ NW¼ Sec. 5 upstream to the confluence with an unnamed tributary flowing from the south in NMPM, T.7S., R.21W., NE¼ SW¼ Sec. 8.

m. Little Blue Creek for approximately 4.5 km (2.8 mi), extending from the confluence with the Blue River in GSRM, T.1S., R.31E., center Sec. 5 upstream to the mouth of a box canyon in GSRM, T.1N., R.31E., NE¼ SE¼ Sec. 29.


Complex 6 (San Francisco River)
Apache Co.
j&k. Dry Blue Creek/Pace Creek
l. Frieborn Creek
i. Campbell Blue River
e. Tularosa River
f. Negrito Creek
Catron Co., NM
Gila National Forest
San Carlos Indian Reservation
Graham Co.
c. Eagle Creek
Apache-Sitgreaves National Forest
h. Blue River
m. Little Blue Creek
d. San Francisco River
g. Whitewater Creek
Greenlee Co., AZ
Grant Co., NM
b. Bonita Creek
a. Gila River
N
30 km

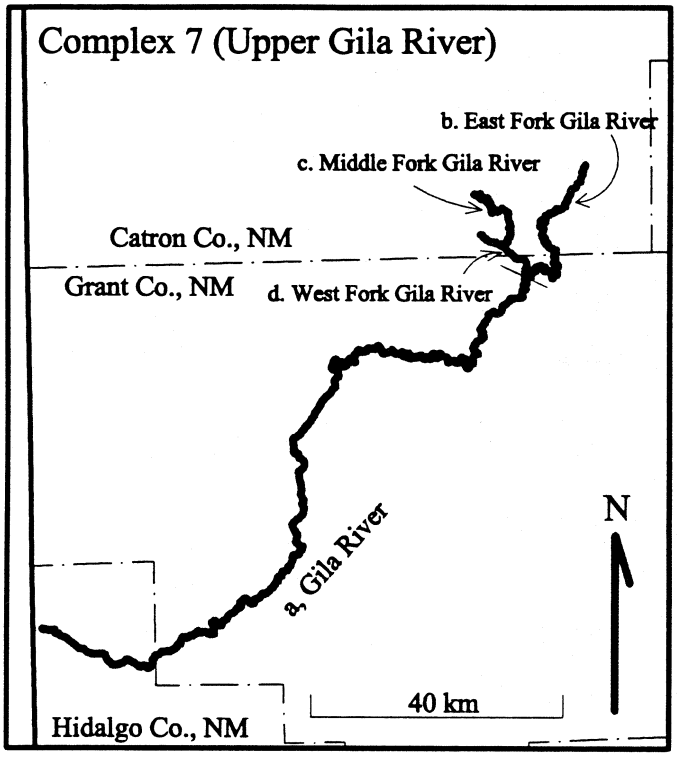
Complex 7. Grant and Catron Counties, New Mexico.

a. Gila River for approximately 164.4 km (102.2 mi), extending from the confluence with Moore Canyon in NMPM, T.18S., R.21W., SE¼ SW¼ Sec. 31 upstream to the confluence of the East and West Forks of the Gila River in NMPM, T.13S., R.13W., center Sec. 8.

b. East Fork Gila River for approximately 42.1 km (26.1 mi), extending from the confluence with the West Fork Gila River in NMPM, T.13S., R.13W., center Sec. 8 upstream to the confluence of Beaver and Taylor Creeks in NMPM, T.11S., R.12W., NE¼ Sec. 17.

c. Middle Fork Gila River for approximately 19.1 km (11.8 mi), extending from the confluence with the West Fork Gila River in NMPM, T.12S., R.14W., SW¼ Sec. 25 upstream to the confluence with Brothers West Canyon in NMPM, T.11S., R.14W., NE¼ Sec. 33.

d. West Fork Gila River for approximately 12.4 km (7.7 mi), extending from the confluence with the East Fork Gila River in NMPM, T.13S., R.13W., center Sec. 8 upstream to the confluence with EE Canyon in NMPM, T.12S., R.14W., east boundary of Sec. 21.



Dated: April 18, 2000.

Stephen C. Saunders,

Acting Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 00–10202 Filed 4–21–00; 8:45 am]

BILLING CODE 4310–55–P

Federal Register

Tuesday,
April 25, 2000

Part VI

Department of Housing and Urban Development

24 CFR Part 882
Section 8 Moderate Rehabilitation Program; Executing or Terminating Leases on Moderate Rehabilitation Units When the Remaining Terms of the Housing Assistance Payments (HAP) Contract Is for Less Than One Year; Final Rule

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

24 CFR Part 882

[Docket No. FR–4472–F–02]

RIN 2577–AB98

Section 8 Moderate Rehabilitation Program; Executing or Terminating Leases on Moderate Rehabilitation Units When the Remaining Term of the Housing Assistance Payments (HAP) Contract Is for Less Than One Year

AGENCY: Office of the Assistant Secretary for Public and Indian Housing, HUD.

ACTION: Final rule.

SUMMARY: This final rule adopts an interim rule published on October 4, 1999, that implemented in the Section 8 Moderate Rehabilitation Program statutory language that requires that any initial lease term between an owner and a family not extend beyond the term of the HAP contract. Before issuance of the October 4, 1999 interim rule, the program regulations for the Section 8 Moderate Rehabilitation Program provided that the initial lease term between an owner and a family must be for at least one year. The regulations were silent on the requisite lease term when the Housing Assistance Payments (HAP) contract term expires in less than one year.

This October 4, 1999 interim rule also revised the program regulation to allow an owner and a public housing agency (PHA) to mutually agree to terminate a unit from the HAP contract if a unit becomes vacant and the term of the HAP contract is for less than one year.

The October 1999 interim rule provided a 60-day public comment period. No public comments were received and therefore the interim rule is adopted without change.

DATES: Effective Date: May 25, 2000.

FOR FURTHER INFORMATION CONTACT: Gerald J. Benoit, Director, Real Estate and Housing Performance Division, Office of Public and Assisted Housing Delivery, Room 4210, U.S. Department of Housing and Urban Development, 451 Seventh Street, SW, Washington, DC 20410–5000; telephone: (202) 708–0477 (this is not a toll-free number). Persons with hearing or speech impairments may access this number via TTY by calling the toll-free Federal Information Relay Service at (800) 877–8339.

SUPPLEMENTARY INFORMATION:

I. Background

Section 8(d)(1)(B)(i) of the United States Housing Act of 1937 (42 U.S.C. 1437f) (1937 Act) requires that the initial lease between the tenant and the owner in the Section 8 Moderate Rehabilitation Program be for a period of at least one year or the term of the HAP contract, whichever is shorter. In most cases, Section 8 Moderate Rehabilitation dwelling leases will terminate concurrently with Housing Assistance Payments (HAP) contract expirations. In some cases, however, a dwelling lease ended prior to the expiration of the Moderate Rehabilitation HAP contract. A lease may end prior to the expiration of the Moderate Rehabilitation HAP contract as a result of: (1) An action by an owner to terminate tenancy in accordance with the lease addendum and program regulations; (2) a tenant's action to terminate the lease agreement; or (3) an action by a housing authority to terminate the family from the program for failure to comply with the family's obligations under the Statement of Family Responsibility and the owner chooses to terminate the lease with the family.

On October 4, 1999 (64 FR 53868), HUD issued an interim rule that implemented section 8(d)(1)(B)(i) of the 1937 Act. October 4, 1999 interim rule required that any initial lease term between an owner and a family not extend beyond the term of the HAP contract. Before issuance of the October 4, 1999 interim rule, the program regulations in 24 CFR 882.403(d) provided, in pertinent part, that the initial lease between the family and owner must be for at least one year. Under these previous regulations, if a lease agreement ended with less than twelve months remaining on the HAP contract, § 882.403(d) effectively prohibited an owner from reoccupying the unit with a new family. The result was that some Section 8 Moderate Rehabilitation owners lost rental income on units because the remaining term of the HAP contract is for less than twelve months and § 882.512(a) prohibited an owner from occupying a unit under a HAP contract with an ineligible family (i.e., a family other than one participating in the Section 8 Moderate Rehabilitation program).

Accordingly, the October 4, 1999 interim rule revised § 882.403(d) to permit an initial lease for at least one year or the term of the HAP contract, whichever is shorter. The interim rule also provided that if the initial term of the lease is for less than one year because the remaining term of the HAP contract is for less than one year, the owner and the PHA may mutually agree to terminate the unit from the HAP contract. The provision that any renewal or extension of the lease term may not extend beyond the remaining term of the HAP contract was not changed by the October 4, 1999 interim rule.

The October 4, 1999, interim rule provided a 60-day public comment period. No public comments were received during this period. Accordingly, this final rule adopts the October 4, 1999 interim rule without change.

II. Findings and Certifications

Environmental Impact

A Finding of No Significant Impact with respect to the environment for this rule was made in accordance with HUD regulations at 24 CFR part 50, which implement section 102(2)(C) of the National Environmental Policy Act of 1969 (42 U.S.C. 4332) at the time of the interim rule. The Finding of No Significant Impact remains available for public inspection between 7:30 a.m. and 5:30 p.m. weekdays in the Office of the Rules Docket Clerk, Office of the General Counsel, U.S. Department of Housing and Urban Development, Room 10276, 451 Seventh Street, SW, Washington, DC 20410.

Federalism

Executive Order 13132 (entitled ''Federalism'') prohibits, to the extent practicable and permitted by law, an agency from promulgating a regulation that has federalism implications and either imposes substantial direct compliance costs on State and local governments and is not required by statute, or preempts State law, unless the relevant requirements of section 6 of the Executive Order are met. This final rule does not have federalism implications and does not impose substantial direct compliance costs on State and local governments or preempt State law within the meaning of the Executive Order.

Regulatory Flexibility Act

This rule will not have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act (5 U.S.C. 605(b)), because it does not place major burdens on housing authorities or housing owners. This final rule adopts the October 4, 1999, interim rule without change. The regulatory flexibility analysis provided

in the interim rule is applicable to this rule. This rulemaking merely provides an exception to allow leases for terms of less than twelve months under the Moderate Rehabilitation Program.

Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) (UMRA) requires Federal agencies to assess the effects of their regulatory actions on State, local, and tribal governments and on the private sector. This final rule does not impose, within the meaning of the UMRA, any Federal mandates on any State, local, or, tribal governments or on the private sector.

List of Subjects for 24 CFR Part 882

Grant programs—housing and community development, Homeless, Lead poisoning, Manufactured homes, Rent subsidies, Reporting and recordkeeping requirements.

PART 882—SECTION 8 MODERATE REHABILITATION PROGRAM

Accordingly, the interim rule amending 24 CFR part 882, which was published at 64 FR 53869 on October 4, 1999, is adopted as a final rule without change.

Dated: April 17, 2000.

Harold Lucas,

Assistant Secretary for Public and Indian Housing.

[FR Doc. 00–10253 Filed 4–24–00; 8:45 am]

BILLING CODE 4210–33–P

Federal Register

Tuesday,
April 25, 2000

Part VII

The President

Proclamation 7296—Bicentennial of the Library of Congress

Federal Register
Vol. 65, No. 80
Tuesday, April 25, 2000

Presidential Documents

Title 3—

The President

Proclamation 7296 of April 21, 2000

Bicentennial of the Library of Congress

By the President of the United States of America

A Proclamation

The Library of Congress is truly America's library. Established on April 24, 1800, as the Congress prepared to transfer the Federal Government from Philadelphia to Washington, D.C., it is our country's oldest Federal cultural institution. With Thomas Jefferson's private library—acquired in 1815—as its core, the Library of Congress has reflected from its earliest days the breadth and variety of Jefferson's interests and his love of democracy, expanding the store of human knowledge, and helping ensure the free flow of ideas.

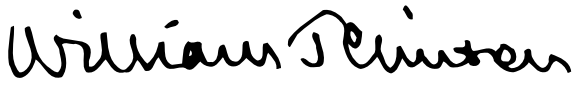
Two centuries later, the Library's collections remain diverse and expansive, containing materials on virtually every subject, in virtually every medium. The Library houses approximately 120 million items, including more than 18 million books and some of the world's largest collections of maps, manuscripts, photographs, prints, newspapers, sound recordings, motion pictures, and other research materials. The Library also offers wide-ranging services to the Government and the public, serving simultaneously as a legislative library and the major research arm of the United States Congress; the copyright agency of the United States; the world's largest law library; and a major center for preserving research materials and for digitizing documents, manuscripts, maps, motion pictures, and other specialized materials for use on the Internet.

Today, America's library is also the world's library. An international resource of unparalleled reach, the Library of Congress provides services through its 21 reading rooms in 3 buildings on Capitol Hill as well as electronically through its web site, which registers more than 4 million transactions each workday from people around the globe. With its remarkable collections and resources, the Library has truly fulfilled its stated mission to make ''available and useful . . . and to sustain and preserve a universal collection of knowledge and creativity for future generations.''

Libraries have always enabled people, in the words of James Madison, to ''arm themselves with the power which knowledge gives.'' These words, inscribed at the entrance of the James Madison Memorial Building of the Library of Congress, are a tribute to the Library's past and a sustaining goal as it embarks on its third century.

NOW, THEREFORE, I, WILLIAM J. CLINTON, President of the United States of America, by virtue of the authority vested in me by the Constitution and laws of the United States, do hereby proclaim April 24, 2000, as a time to commemorate the Bicentennial of the Library of Congress. I call upon the people of the United States to observe this occasion with appropriate programs, ceremonies, and activities that celebrate the many contributions the Library of Congress has made to strengthening our democracy and our national culture.

IN WITNESS WHEREOF, I have hereunto set my hand this twenty-first day of April, in the year of our Lord two thousand, and of the Independence of the United States of America the two hundred and twenty-fourth.



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The items in this list were editorially compiled as an aid to Federal Register users. Inclusion or exclusion from this list has no legal significance.

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H.R. 1374/P.L. 106–183

To designate the United States Post Office building located at 680 U.S. Highway 130 in Hamilton, New Jersey, as the ''John K. Rafferty Hamilton Post Office Building''. (Apr. 13, 2000; 114 Stat. 200)

H.R. 3189/P.L. 106–184

To designate the United States post office located at 14071 Peyton Drive in Chino Hills, California, as the ''Joseph Ileto Post Office''. (Apr. 14, 2000; 114 Stat. 201)

Last List April 11, 2000

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